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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HOMER N. COMEAU, *et ux.*,
Petitioners,

v.

CITY OF BROOKSIDE VILLAGE, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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HOMER N. COMEAU, *et ux.*,

Petitioners,

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Respondents City of Brookside Village ("Brookside" or "City"), the mayor and the members of the city council, through counsel, submit this opposition to the Petition for a Writ of Certiorari to the Supreme Court of Texas ("Petition") in the above-captioned action.*

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*In addition to petitioners Homer and Hazel Comeau and respondent Brookside, the remaining parties are respondents, the mayor and the members of the Brookside city council, who were made nominal parties to this action. At the time the suit was filed, these individuals were: Louis Boehm-Mayor; and Shirley Zamorsky, Frank Gonzales, Stanley S. Chock, Boyd Christman, and Eugene Satterwhite-councilmembers. At present, these officials are: Phillip W. Rutter-Mayor; and Shirley Zamorsky, Sheryl Karolinski, Darvan Webb, Jerry DeWeese, and Eugene Satterwhite – councilmembers. To the extent that the present officials are different from the previous officials, the new officials are substituted for their predecessors pursuant to Rule 40.3 of this Court's rules.

OPINIONS AND JUDGMENTS BELOW

The opinion of the Supreme Court of Texas is reported at 633 S.W.2d 790 (Tex. 1982), and is reprinted in Appendix A to the Petition. The opinion of the Civil Court of Appeals of Texas is reported at 616 S.W. 2d 333 (Tex. Civ. App. 1981) and is reprinted in Appendix B to the Petition. The Judgment of the District Court of Brazoria County, Texas, 149th Judicial District is unreported and is reprinted in Appendix A to this opposition, at 4a. The district court's Findings of Fact and Conclusions of Law is unreported and is reprinted in Appendix A to this opposition, at 1a. The district court's Temporary Restraining Order and Show Cause Order and Order Granting Preliminary Injunction also are unreported and are reprinted in Appendix A to this opposition, at 10a and 7a respectively.

JURISDICTION

Petitioners incorrectly allege jurisdiction of this Court under 28 U.S.C. § 1254 (1) (1976). Section 1254(1) only pertains to cases in the federal courts of appeals. If this Court has jurisdiction, it may be based only on 28 U.S.C. § 1257 (1976).

CONSTITUTION, STATUTE AND ORDINANCES

In addition to the constitutional and statutory provisions set forth in the Petition, the tenth amendment to the Constitution, section 5401 of the National Manufactured Housing Construction and Safety Standards Act of 1974, Brookside Ordinances 58 and 78 are involved, and are reprinted in Appendix B to this opposition, at 13a.

STATEMENT OF THE CASE

I. The City of Brookside Village.

Brookside is an incorporated city of approximately two square miles[1] with a population of about 1,400 persons[2]. The City is a residential or "bedroom" community and has no industry.[3] The land surrounding and within Brookside is composed of gumbo and clay, both of which have poor absorption capabilities.[4] In addition, the City is in a low elevation area,[5] and, as a result, is susceptible to flooding[6].

Brookside has no water or sewage system.[7] Instead, these facilities are provided by individual water wells and septic tanks.[8] Due to the cost of installing either a water or sewage system, it is unlikely that Brookside ever will have such systems.[9]

On October 6, 1970, Brookside's Board of Aldermen enacted

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[1]Statement of Facts at 132, Comeau v. City of Brookside Village, No 78-F2046 (Dist. Ct. Tex. Mar. 4, 1980) (trial testimony of Eston Louis Boehm, Jr., Mayor of Brookside) [hereinafter cited as S.F.].

[2]Bureau of The Census, U.S. Dept. of Commerce, PHC80-V- 45, 1980 Census of Population and Housing-Texas 34 (1981).

[3]S.F., *supra* note 1, at 132 (testimony of Mayor Boehm).

[4]City of Brookside Village v. Comeau, 633 S.W.2d 790,793 (Tex. 1982), *petition for cert. filed sub nom.* Comeau v. City of Brookside Village, 51 U.S.L.W. 3,341 (U.S. Sep. 28, 1982) (No. 82-689); S.F., *supra* note 1, at 63 (testimony of Don Marshall Rives, building official for Brookside).

[5]S.F., *supra* note 1, at 26 (testimony of Mayor Boehm).

[6]*Id.* at 59 (testimony of Lloyd Yost, Superintendent of Brazoria County Drainage District No. Four).

[7]City of Brookside Village v. Commeau, 633 S.W.2d at 793.

[8]*Id.*

[9]*See* S.F., *supra* note 1, at 133-34 (testimony of Mayor Boehm).

Ordinance 58, which provided standards for mobile home parks.[10] Section I(N) defined a mobile home as:

> a portable vehicle constructed on a chassis and which has been designed so that it may be occupied and used without a permanent foundation. For the purposes of the Ordinance, a mobile home shall mean a single family dwelling unit suitable for year-round occupancy and which has provision for electrical and water connections and which provides for waste disposal in compliance with the Plumbing Code requirements for dwellings.

To guard against flooding, erosion and other "adverse influences," Ordinance 58 provided soil, ground cover and site drainage requirements,[11] In addition, the ordinance, inter alia, set forth water supply, sewage disposal and fire protection standards.[12]

Subject to certain restrictions, ordinance No. 58 also allowed mobile homes to be placed outside of mobile home parks. For example, a single mobile home could be located outside a mobile home park only if it were placed on a lot of at least nine thousand (9,000) square feet.[14]

On April 14, 1974, Brookside's city council enacted Ordinance 78, amending Ordinance 58, to limit the future location of mobile homes in Brookside to mobile home parks.[15] Mobile homes previously installed in accordance with Ordinance 58 were allowed to remain in place and continue to be occupied.[16]

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[10]Brookside Village, Tex., Ordinance 58 (Aug. 6, 1970).

[11]*Id.* § IX.

[12]*Id.* §§ X, XI, XVI.

[13]*Id.* § XVIII.

[14]*Id.* § XVIII(B).

[15]Brookside Village, Tex., Ordinance 78, §§ I, II (Apr. 14, 1974).

[16]*Id.* § III.

Among the stated reasons behind the enactment and continued maintenance of Ordinance 78 were:

1) The higher incidence of fire among Brookside's mobile homes, together with a restricted supply of water and a small, volunteer fire department;[17]

2) Concern for the placement of large numbers of mobile homes on plots of land too small to accommodate septic tanks and the requisite drainage area, in light of the poor absorbtion quality of the soil;[18] and

3) Aesthetic considerations[19] and the negative impact of mobile homes on surrounding property values, due in part, to the rapid rate of deterioration of mobile homes relative to site-built houses.[20]

As of February 11, 1980, the date of the trial, there was one mobile home park within Brookside and several mobile home parks immediately outside of Brookside.[21]

II. Actions Taken by the Comeaus.

The Comeaus are the owners of a parcel of land located at 12700 Mykawa Road, Brookside, Texas.[22] On or about July 10,

[17]S.F., *supra* note 1, at 42-43, 48-49, 51 (testimony of Mayor Boehm).

[18]*Id.* at 85-86 (testimony of city councilmember Frank Noe). The ordinances of Brookside do not specify the size of land on which a site-built house must be placed. However, councilmember Noe testified that the majority of site-built houses in Brookside are built on plots of land of three-quarters to one acre, and that nine thousand (9,000) square feet, the requisite size of plots for mobile homes outside of mobile home parks, under Ordinance 58, § XVIII (B), was only about one-quarter of an acre.

[19]*Id.* at 27 (testimony of Mayor Boehm).

[20]*Id.*at 79-80, 84-85 (testimony of Councilmember Noe).

[21]*Id.* at 24 (testimony of Mayor Boehm).

[22]Agreed Order as to Stipulated Facts ¶II (3) [hereinafter cited as Stipulation].

1978, more than four years after the enactment of Ordinance 78, petitioners applied to the city council for permission to place a mobile home on their land.[23] On or about August 3, 1978, the city council advised petitioners of its denial of their request.[24] On or about September 7, 1978, petitioners purchased a mobile home.[25] Notwithstanding the council's denial of their request, and without applying for a permit to install a septic tank,[26] on or about September 8, 1978, petitioners caused the above mobile home to be transported to their property.[27] Thereafter, petitioners took action to prevent the enforcement of Ordinances 58 and 78.

III. Proceedings Below.

Petitioners instituted this action on September 8, 1978, by filing in the District Court of Brazoria County, Texas, 149th Judicial District, Plaintiffs' Original Petition for Temporary Restraining Order, Temporary Injunction and Other Relief ("Complaint"). So that they could occupy their mobile home, petitioners sought the issuance, without notice, of a temporary restraining order enjoining Brookside and its agents from denying petitioners all permits and certificates necessary for the connection of utilities.[28] In the alternative, petitioners sought a

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[23]Plaintiffs' Trial Brief at 1.

[24]*Id.*

[25]Stipulation, *supra* note 22, ¶ II(2). Petitioners stipulated that the structure which they purchased was a "mobile home." S.F., *supra* note 1, at 92 (statement by plaintiffs' counsel); Stipulation, *supra* note 22, ¶ II.

[26]S.F., *supra* note 1, at 89 (testimony of Homer Comeau).

[27]Stipulation, *supra* note 22, ¶ II(2).

In addition to the mobile home, there is situated on petitioners' land, a store and icehouse, in one building, and two trailers, one twelve feet by fifty feet and the other twelve feet by sixty feet, which Mr. Comeau brought onto petitioners' land for use as storage sheds in Mr. Comeau's "trailer park." S.F., *supra* note 1, at 90 (testimony of Homer Comeau).

[28]Compl. *ad damnum* clause.

temporary injunction requesting the same relief.[29] Finally, petitioners sought a permanent injunction, a declaration that Ordinances 58 and 78 were unconstitutional as to their prohibition "of the location of placement of a mobile home on private property within the municipal limits of said City" and an unspecified amount of monetary damages.[30]

On September 21, 1978, the court issued a temporary restraining order enjoining and restraining Brookside and its agents from denying petitioners the use and quiet possession of their mobile home.[31] Following a hearing on October 2, 1978, the court converted the temporary retraining order into a temporary injunction,[32] which remained in effect through the trial.

Trial without jury was held on February 11, 1980, and, on March 4, 1980, the court rendered its Judgment.[33] The Judgment upheld Ordinances 58 and 78, and, consequently, directed petitioners to remove their mobile home from its unauthorized location within sixty (60) days of the Judgment's becoming final. Following issuance of the Judgment, petitioners, on March 4, 1980, filed a motion for a new trial.

At petitioners' request, the court, on May 9, 1980, issued Findings of Fact and Conclusions of Law.[34]

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[29] *Id.*

[30] *Id.*

[31] Comeau v. City of Brookside Village, No. 78-F2046 (Dist. Ct. Tex. Sept. 21, 1978) (Temporary Restraining Order and Show Cause Order).

[32] Comeau v. City of Brookside Village, No. 78-F2046 (Dist. Ct. Tex. Oct. 30, 1978 (Order Granting Temporary Injunction).

[33] Comeau v. City of Brookside Village, No. 78-F2046 (Dist. Ct. Tex. Mar. 4, 1980), *rev'd*, 616 S.W. 2d 333 (Tex. Civ. App. 1981), *rev'd sub nom.* City of Brookside Village v. Comeau, 633 S.W. 2d 790 (Tex. 1982), *petition for cert. filed sub nom.* Comeau v. City of Brookside Village, 51 U.S.L.W. 3,341 (U.S. Sept. 28, 1982) (No. 82-689).

[34] Comeau v. City of Brookside Village, No. 78-F2046 (Dist. Ct. Tex. May 9, 1980).

As fact, the court found: Ordinances 58 and 78 were duly passed and in effect prior to the date petitioners purchased their mobile home, which home met the definition of "mobile home" in Ordinance 58; the lack of municipal water and sewage systems in Brookside created a potential health hazard; Ordinances 58 and 78 bore a substantial relationship to the public health, safety, morals and general welfare; and petitioners' placement of their mobile home on their property violated Ordinances 58 and 78.[35] As law, the court concluded that Ordinances 58 and 78 were not an abuse of discretion, were a valid exercise of the city council's police power, and, therefore, were constitutional.[36]

On May 6, 1981, petitioners' motion for a new trial was overruled by operation of law, and petitioners thereafter filed an appeal with the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas at Houston. The court of appeals reversed the trial court's decision holding Ordinances 58 and 78 to be constitutional and directing petitioners to remove their mobile home.[37] The court found that Brookside had not shown a threat to public health to be present by the placement of petitioners' mobile home outside of a mobile home park.[38] The court concluded that there was no justification for treating mobile homes differently from site-built houses, and that, therefore, Ordinances 58 and 78 were an invalid exercise of Brookside's police power.[39] The court of appeals denied respondents' request for

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[35] *Id.* at 1.

[36] Id. at 2.

[37] Comeau v. City of Brookside Village, 616 S.W.2d 333 (Tex. Civ. App. 1981), *rev'd sub nom.* City of Brookside Village v. Comeau, 633 S.W. 2d 790 (Tex. 1982), *petition for cert. filed sub nom.* Comeau v. City of Brookside Village, 51 U.S.L.W. 3,341 (U.S. Sept. 28, 1982) (No. 82-689).

[38] *Id.* at 334.

[39] *Id.*

rehearing, and respondents then filed with the Supreme Court of Texas an application for writ of error.

The Texas Supreme Court reversed the judgment of the court of appeals and affirmed the judgment of the trial court.[40] The court first outlined the standard of review applicable to a zoning or other land use regulation and reiterated that such a regulation is presumed valid and is upheld unless the party challenging the regulation shows it to be arbitrary and unreasonable.[41] The court recognized that passage of Ordinances 58 and 78 was motivated by the considerations set forth at 5 *supra,* and concluded that they bore "a substantial relationship to the public health, safety, morals or general welfare" and were "not clearly arbitrary and unreasonable."[42] Next, the court observed that improvements had been made in the quality and appearance of mobile homes subsequent to passage of the National Manufactured Housing Construction and Safety Standards Act of 1974 ("NMHCSSA"),[43] noted that a majority of Brookside's mobile homes were made prior to implementation of federal standards for mobile homes, and concluded that, in any event, any change in Brookside's policy toward the location of mobile homes should be made by the city council and not the court.[44] Finally, the court held that Ordinances 58 and 78 were not in conflict with either the NMHCSSA or the Texas Manufactured Housing Standards Act ("TMHSA"),[45] and, therefore, were not pre-empted by either act.[46]

Petitioners moved the Texas Supreme Court for a rehearing, but, on June 30, 1982, the court overruled the motion.

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[40]City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex. 1982).

[41]*Id.* at 792-93.

[42]*Id.* at 793-94.

[43]42 U.S.C. §§ 5401-5426 (1976 & Supp. V 1981).

[44]633 S.W.2d at 795 & n.6.

[45]Tex Rev. Civ. Stat.Ann. art 5221f. (Vernon Supp. 1971-1982).

[46]633 S.W.2d at 796.

SUMMARY

The issues petitioners raise are neither novel nor unresolved by this Court. Perhaps in recognition of this, petitioners have abandoned entirely their first issue – whether Ordinances 58 and 78 have effected a taking of petitioners' property. Even if the Court, sua sponte, were to consider this issue, a multiplicity of decisions of this Court establish that a taking has not occurred. Ordinances 58 and 78 were in effect prior to petitioners' purchase of their mobile home. The ordinances limit only slightly the uses of petitioners land, and certainly leave open economically viable uses. Further, the ordinances advance legitimate state interests, i.e. protection of the public health, safety, morals and general welfare.

Ordinances 58 and 78 also do not violate the due process and equal protection clauses of the fourteenth amendment. Mobile homes are not the same as site-built houses. If they were, this case would not have been brought. The city council did not exclude mobile homes from Brookside, but, in recognition of the differences between site-built houses and mobile homes, required mobile homes to be located in mobile home parks. Ordinances 58 and 78 are presumed valid, and petitioners have not met their burden of showing that the ordinances are unreasonable and arbitrary, and could not reasonably be related to the public health, safety, morals or general welfare.

Finally, the NMHCSSA has not pre-empted Ordinances 58 and 78. The NMHCSSA provides construction and installation standards for mobile homes, while Ordinances 58 and 78 pertain to the location of mobile homes and the requirements for mobile home parks. As such, the ordinances in no way conflict with the NMHCSSA. Any other conclusion, particularly with respect to the ordinances' locational requirements, would result in a violation of the tenth amendment to the Constitution by allowing the federal government to displace the traditional power of states and cities to control land use.

REASONS FOR DENYING THE PETITION

1. Petitioners Have Abandoned the Taking Issue, and, in Any Event, Numerous Decisions of This Court Establish that a Taking Has Not Occurred.

The first issue raised in petitioners' Questions Presented is whether the ordinances of Brookside which limit the location of mobile homes to mobile home parks deprive "Petitioners of the Fourteenth Amendment's right to aquire, enjoy, own and dispose of property" – the taking issue.[47] Petitioners, however, fail to address this issue either in their Reasons for Granting the Petition or anywhere else in the Petition. From this, one only can surmise that petitioners have abandoned their first issue. This factor, alone, provides the Court with ample justification for not considering petitioners' first issue. Even if the Court were to consider the taking issue, it is readily apparent from numerous decisions by this Court that respondents have not taken petitioners' property.

Even before the seminal case upholding the zoning power of states and cities, *Village of Euclid v. Ambler Realty Co.*,[48] this Court upheld land use regulations against taking challenges brought under the fifth and fourteenth amendments to the Constitution. For example, in *Welch v. Swasey*,[49] this Court upheld a Massachusetts law restricting the height of certain buildings within Boston to 80 to 100 feet. In dismissing the taking argument, the Court concluded:

> We are not prepared to hold that this limitation of 80 to 100 feet, while in fact a discrimination or classification, is so unreasonable that it deprives the owner of the property of its profitable use without justification, and that he is therefore entitled under the Constitution to compensation for such invasion of his rights. The discrimination just made is, as we

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[47] Petition at i.

[48] 272 U.S. 365 (1926).

[49] 214 U.S. 91 (1901).

> think, reasonable, and is justified by the police power.[50]

Subsequently, in *Euclid*, the Court again rejected a taking argument, this time in the context of an ordinance establishing a zoning plan for the Village of Euclid, Ohio, the effect of which, it was alleged, was to destroy certain uses for which plaintiff had purchased lands in Euclid. The Court held that the ordinance was a valid exercise of the city's police powers.[51] Although the Court did not address specifically the taking issue, but focused primarily on the due process and equal protection aspects of the case, it is evident from the Court's holding that it concluded that the ordinance in issue had not effected a taking.[52]

The opinion in *Goldblatt v. Town of Hempstead*[53] offers a sound explanation of why land use restrictions are not considered unconstitutional takings:

> It is an oft-repeated truism that every regulation necessarily speaks as a prohibition. If the ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional. . . . As pointed out in Mugler v. Kansas, [123 U.S. 623, 688 (1887)] . . . 'A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by

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[50] *Id.* at 107.

[51] 272 U.S. at 397.

[52] *See* Agin v. City of Tiburon, 447 U.S. 255, 261 (1980), Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 125, 133-34 (1978).

[53] 369 U.S. 590 (1962).

> any one, for certain forbidden purposes, is prejudicial to the public interest. . . . The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals, or the safety of the public, is not – and, consistently with the existence and the safety of organized society, cannot be – burdened with the condition that the state must compensate such individual owners for the pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community."[54]

This reasoning is present in recent zoning and other land use cases wherein the Court repeatedly has declined to find a taking based upon property use restrictions.

In *Penn Central Transportation Co. v. City of New York*,[55]

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[54] *Id.* at 592-93.

Citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), the Court recognized the possibility that, under certain, limited circumstances, a land use regulation could amount to a taking. At issue in *Mahon* was a Pennsylvania statute, enacted after plaintiffs' sale of surface property to defendants, which prevented plaintiffs from mining coal beneath defendants' property, and thereby destroyed entirely plaintiffs' rights to their coal. 260 U.S. at 412, 414. Even in holding that a taking had occured, the Court recognized that "government hardly could go on if, to some extent, value incident to property could not be diminished without paying for every change in the general law. As long recognized, some values are enjoyed under an implied limitation, and must yield to police power." *Id.* at 413. This quotation is directly applicable to the instant suit. As discussed more fully at 21-22 *infra*, Ordinances 58 and 78 were enacted for the health, safety, morals and general welfare of the citizens of Brookside, and, thus, were a proper exercise of the city council's police power. Further, as discussed at 15 *infra*, the uses to which the petitioners' property may be put have not been eliminated, but only lessened slightly. Therefore, even under *Mahon*, the ordinances have not effected a taking.

[55] 438 U.S. 104 (1978).

plaintiffs challenged under the property provisions of the fifth and fourteenth amendments a New York City law enacted to protect historical landmarks from destruction or significant alteration. Specifically, plaintiffs challenged a decision of the Landmarks Preservation Commission denying approval of plaintiffs' plan for construction of a fifty (50)-story office building over New York's Grand Central Terminal, on the grounds that such a building would destroy the Terminal's aesthetic features. In holding that the law had not effected a taking, the Court reviewed the history of taking challenges under the fifth amendment's property clause,[56] and, inter alia, observed:

> In instances in which a state tribunal reasonably concluded that the "health, safety, morals or general welfare' would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests. . . . Zoning laws are, of course, the classic example, . . . which have been viewed as permissible governmental action even when prohibiting the most beneficial use of property.[57]

More recently, in *Agin v. City of Tiburon,*[58] the Court reaffirmed the principles set forth in the above cases. Plaintiffs purchased for residential development five acres of land in Tiburon, California. In consequence, and pursuant to state law, the city enacted two zoning ordinances which restricted to between two and five the number of single-family residences plaintiffs would be allowed to construct on their land. Plaintiffs' facial attack on the ordinances alleged that the ordinances had taken their property in violation of the fifth and fourteenth amendments. In again rejecting the taking argument, the Court

[56]The Court noted that the meaning of the fifth amendment's property clause had been made applicable to the States through the fourteenth amendment. *Id.* at 122.

[57]*Id.* at 125 (citations omitted).

[58]447 U.S. 255 (1980).

reasoned that a zoning law may effect a taking only if it "does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land. . . ."[59] Neither of these conditions is present in the instant suit.

Ordinances 58 and 78 were in effect prior to the purchase of petitioners' mobile home. In addition, the city council had denied petitioners' request for permission to place a mobile home on their land. Nevertheless, petitioners purchased a mobile home,[60] and, in violation of the ordinances and the city council's decision, placed this mobile home on their property. Petitioners, therefore, cannot complain, even if such a complaint could have merit, that the ordinances deprived them of a use of their property for which they could have had a reasonable expectation at the time they purchased their mobile home. Moreover, there are a variety of economically viable uses to which petitioners' property may be devoted. For example, there already is a store on the premises.[61] In addition, petitioners assert that "the City ordinances will allow the Petitioners to place a business or commercial venture (including a high density, high rise apartment complex) on their property."[62] Indeed, the only limitation at present on the uses of petitioners' property is the restriction against the placement thereon of a mobile home. Under these circumstances, not even petitioners legitimately could contend that Ordinances 58 and 78 leave them without an economically viable use for their property.

[59] *Id.* at 260.

[60] The record does not reveal the exact date on which petitioners purchased the land on which their mobile homes is situated. However, it would appear that they bought the land in mid-1978, a short time before they bought the mobile home but long after the effective dates of the ordinances. This supposition is based on Mr. Comeau's Affidavit Supporting Temporary Order, wherein Mr. Coumeau stated that he and his wife had purchased the land at 12700 Mykawa Road, had sold their former residence and had to vacate its premises by September 10, 1978.

[61] S.F., *supra* note 1, at 90.

[62] Petition at 11.

Not only do the ordinances in question reserve to petitioners a variety of uses for their property, but they also advance legitimate state interests. As discussed more fully at 21-22 *infra*, the limitation on the location of mobile homes was predicated on considerations of the relative susceptibility to fire of mobile homes, particularly in light of the availability of water and the limited capabilities of the fire department, the absence of a municipal sewage facility and aesthetics. This Court consistently has held each of these concerns to be a valid state interest, which warrants a city's exercise of its police power. Ordinances 58 and 78, therefore, have not effected a taking of petitioners' property in violation of the fourteenth amendment.[63]

II. Ordinances 58 and 78 Are Valid Under the Due Process and Equal Protection Clauses Because They Are Reasonably Related to the Protection of the Public Health, Safety, Morals and General Welfare, and Petitioners Have Failed To Meet Their Burden of Showing Otherwise.

The thrust of petitioners' argument is that the ordinances requiring mobile homes to be placed in mobile home parks violate the equal protection and due process clauses of the fourteenth amendment because they do not "bear a substantial relationship to public health, safety or general welfare but rather . . . [are] arbitrary, unreasonable and irrationale [sic]."[64] Unable, how-

[63]As noted at 11 *supra*, as part of their taking issue, petitioners contend that the ordinances deprive them of their right "to acquire . . . own and dispose of property." These contentions also are entirely devoid of merit. That the ordinances have not deprived petitioners of any right to acquire or own property is seen by the fact that, notwithstanding the existence of the ordinances, petitioners purchased, and own in fee simple, Compl. ¶I, the land on which their mobile home is situated. Further, there is no allegation that, as a result of the ordinances, petitioners have been unable to sell their property.

[64]Petition at i. In their Questions Presented, petitioners only refer to Ordinance 58 as being violative of the due process and equal protection clauses. Presumably, petitioners meant Ordinance 58, as amended by Ordinance 78, because Ordinance 78 is the ordinance which actually limits the location of mobile homes to mobile home parks.

ever, to find zoning or other land use decisions from this Court to support their position, petitioners attempt to equate mobile home owners with black citizens in order to gain reliance on such cases as *Brown v. Board of Education*[65] and *McLaughlin v. Florida*[66] for their attack on Brookside's mobile home ordinances.[67] Not only does this approach trivialize these and other cases which have marked significant gains for blacks and other recognized minorities,[68] but it ignores decisions of the Court

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[65]347 U.S. 483 (1954).

[66]379 U.S. 184 (1964).

[67]Petition at 7-9, 18.

[68]While petitioners concede that mobile home owners are not a "suspect classification," Petition at 24, they contend that they are a "discrete and insular minority," Petition at 24-25. Petitioners support this novel conclusion on the following phrase from United States v. Carolene Prods. Co., 304 U.S. 144 (1938): "whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry," 304 U.S. at 153 n.4. Petition at 20-21, 24-25. Petitioners took this phrase out of context, and, in so doing, omitted the portion of the sentence which identified the individuals who fell within the Court's classification of a discrete and insular minority," The portion of the sentence petitioners omitted read: "Nor need we inquire into whether similar considerations enter into the review of statutes directed at particular religions . . . or national . . . or racial minorities. . ." *Id.* (citations omitted). Because petitioners are neither a "suspect classification" nor a "discrete and insular minority," Brookside's ordinances are not subject to a standard of review, for equal protection purposes, any stricter than the traditional reasonableness standard set forth in *Euclid* and its progeny.

Similarly, for due process purposes, petitioners neither have identified nor could identify any "fundamental right" which is in issue. In *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), the Court identified the following "fundamental rights": voting, the right of association, the right of access to the courts and the right of privacy. 416 U.S. at 7. The "fundamental right" to freedom of expression, *see, e.g.*, Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981), also is not in issue. Because "fundamental rights" are not involved, Brookside's mobile home ordinances are not subject to any strict standard of review applicable where "fundamental rights" are involved.

which are directly on point, and resolve petitioners' due process and equal protections claims. As mentioned previously, *Village of Euclid v. Ambler Realty Co.* is the leading case on the zoning power of states and cities. In upholding this power, the Court set forth the standards which govern zoning and other land use regulations:

> If these reasons . . . do not demonstrate the wisdom and sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.[69]

The Court also noted that, "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."[70] Subsequent cases have emphasized the breadth of this power.

In *Village of Belle Terre v. Boraas*,[71] the Court upheld an ordinance which restricted land use to single-family dwellings, and defined "family" in such a way as to allow to live together only persons related by blood, marriage or adoption or two unrelated persons. The Court recognized that the ordinance, for example, permitted a group of ten (10) related individuals to live together but prohibited from living together a group of six (6) unrelated individuals, but concluded that "every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function."[72]

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[69] 272 U.S. at 395.

[70] *Id.* at 388.

[71] 416 U.S. 1 (1974).

[72] *Id.* at 8 (footnote omitted).

In *Young v. American Mini Theatres, Inc.*,[73] the Court sustained a challenge, based on the first amendment and the due process and equal protection clauses, to an ordinance requiring adult motion picture theaters to be dispersed throughout Detroit, rather than allowing them to be located in a concentrated area. In a comment which is germane to this case, the Court observed:

> *[W]e have no doubt that the municipality may control the location* of theaters as well as the location of other commercial establishments, either by confining them to certain specified commercial zones or by requiring that they be dispersed throughout the city. The mere fact that the commercial exploitation of material protected by the First Amendment is subject to zoning and other licensing requirements is not a sufficient reason for invalidating these ordinances.[74]

Even in those rare instances in which the Court has held unconstitutional zoning or other land use ordinances,[75] it has recognized that the power of states and cities in this area is great. Recently, for example, in *Schad v. Borough of Mount Ephraim*,[76] the Court reiterated that "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities."[77] While the Court struck down the ordinances involved in *Schad* and ordinances involved in a few other suits, it did so not because the matters addressed by the legislation were improper subjects of regulation, but because the legislation

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[73]427 U.S. 50 (1976).

[74]*Id.* at 62 (emphasis added).

[75]*E.g.*, Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981); Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981); Moore v. City of East Cleveland, 431 U.S. 494 (1976).

[76]452 U.S.61 (1981).

[77]*Id.* at 68.

infringed upon "fundamental rights", e.g., freedom of expression [78] and sanctity of family life, [79] which rights, on balance, outweighed the interests advanced by the legislation as drafted. However, as discussed at 17 n. 68 *supra,* no "fundamental rights" are at issue in this suit.

Among the specific concerns which the Court has held warrant the exercise of a legislatives body's police power are the danger of fire,[80] the avoidance of aesthetic harm and the preservation of property values[81] and the elimination of unhealthy places[82]. This is not to suggest, however, that there is a narrow range of concerns which justify action by a legislative body. Rather, as the Court concluded in *Berman v. Parker:*[83]

> The concept of the public welfare is broad and inclusive . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.[84]

To the extent that a court reviews an action taken by a

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[78]Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1982); *Schad.*

[79]Moore v. City of East Cleveland, 431 U.S. 494 (1976). The Court distinguished the ordinance involved in *Village of Belle Terre* from the ordinance involved in *Moore* on the grounds that in *Moore* the ordinance prohibited certain related individuals from living together, while in *Village of Belle Terre* the ordinance allowed all related individuals to live together. *Id.* at 489-99.

[80]*Euclid,* 272 U.S. at 388.

[81]*Penn Central,* 438 U.S. at 129; Berman v. Parker, 348 U.S. 26, 33 (1954).

[82]Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).

[83]348 U.S. 26 (1954).

[84]*Id.* at 33.

legislative body, that body's acts are presumed valid,[85] and doubts are resolved in its favor"[86]. Accordingly, the party challenging a statute or ordinance has the burden of establishing that, under no circumstances, may the considerations which led to the legislature's actions be conceived as true, and that, therefore, the legislature has acted unreasonably and arbitrarily."[87] Further, because the legislature is presumed to know the needs of the people,"[88] even if a court were to disagree with the judgment of a legislature, it may not substitute its judgment for that of the legislature."[89] When applied to the facts of this case, the above holdings and their supporting rationales resolve unequivocally that Ordinances 58 and 78 were a proper exercise of the city council's police power, and that the petitioners have failed to meet their burden of showing that the council acted unreasonably and arbitrarily.

Mobile homes are not the same as site-built houses. They are subject to different construction standards,[90] and, in Brookside's experience, mobile homes have presented problems that

[85]Kassel v. Consolidated Freightways Corp. of Delaware, 450 U.S. 662, 670 (1981); Bibb v. Navajo Freight Lines, 359 U.S. 520, 524 (1959); Townsend v. Yeomans, 301 U.S. 441, 450 (1937); *see* Minnesota v. Clover Leaf Creamery Co. 449 U.S. 456, 464 (1981).

[86]*Euclid,* 272 U.S. at 388.

[87]Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981) (quoting Vance v. Bradley 440 U.S. 93, 111 (1979)); *Goldblatt,* 369 U.S. at 596; United States v. Carolene Prods. Co., 304 U.S. 144, 154 (1938).

[88]Townsend v. Yeomans, 301 U.S. 441, 451 (1937).

[89] Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 469 (1981); Ferguson v. Skrupa, 372 U.S. 726, 729 (1963); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 394-95 (1940); Townsend v. Yeomans, 301 U.S. 441, 451 (1937).

[90]Site-built houses in Brookside must be constructed in accordance with the Southern Standard Building Code, S.F., *supra* note 1, at 27 (testimony of Mayor Boehm), while, after 1976, mobile homes must be constructed, in accordance with the NMHCSSA and the regulations promulgated pursuant thereto, 24 C.F.R. § 3280.1-3280.904 (1982), *as amended at* 47 Fed. Reg. 28, 092 (1982).

site-built houses have not presented. Accordingly, without excluding mobile homes from Brookside, the city council has determined that mobile homes only may be located in mobile home parks.

As discussed at 5 *supra*, and as noted in the decision by the Texas Supreme Court,[91] among the considerations behind Brookside's locational requirements was the higher incidence of fire among the mobile homes in Brookside. This problem has been exacerbated because Brookside's water is supplied only by individual wells, and because Brookside only has a small, volunteer fire department. As a result, the fire department has been unsuccessful in fighting mobile home fires.[92] Additionally, the city council was concerned that, if mobile homes could be located outside of mobile home parks, large numbers of mobile homes, each requiring separate water and sewage facilities, would be placed on plots of land too small adequately to accommodate these facilities. By requiring mobile homes to be located in mobile home parks, however, the possibility exists of providing centralized water and sewage facilities for all of the mobile homes in the respective mobile home parks.[93] Finally, the city council determined that, largely due to their relatively rapid rate of deterioration, mobile homes scattered throughout Brookside would be aesthetically harmful and would lower property values.

Petitioners do not claim that the above considerations are beyond the scope of the public health, safety, morals or general welfare, but, rather, contend that Ordinances 58 and 78 are unrelated to these goals, and are, therefore, arbitrary and unreasonable."[94] With respect to the concerns for fire and the lack of sewage facilities, petitioners support their argument by contending that "no studies were performed, no experts

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[91]633 S.W. 2d at 793.

[92]S.F., supra note 1, at 48-49.

[93]*See* Ordinance 58, § II(B)(4)(d).

[94]Petition at 10-11, 23.

solicited and no committees formed to review or evaluate the problems prior to the enactment of the ordinances."[95] This assertion, however, rings hollow in light of this Court's holdings that the burden is on the party challenging an act to show that it is unreasonable, arbitrary and not reasonably related to the goals sought to be achieved. Further, in *Townsend v. Yeomans*,[96] the Court concluded that "[t]here is no principle of constitutional law which nullifies action taken by a legislature, otherwise competent, in the absence of a special investigation . . . . Whether or not special inquiries should be made is a matter for the legislative discretion."[97] Additionally, even assuming experts or special studies would have proven informative, petitioners offered no experts or studies of their own to rebut the testimonies concerning the incidences of fire among Brookside's mobile homes or the absorption properties of Brookside's soil and the constraints thereby imposed.

With respect the aesthetic considerations, petitioners rely exclusively on the testimony of only one person, Mayor Boehm, who, according to petitioners, "had trouble differentiating between mobile homes and site-built structures in photographs."[98] Apart from the inherent limitations of a two dimensional representation of a three dimensional object, the photographs bore no relation either to Brookside's mobile homes or to its site-built houses. Instead, petitioners used pictures of mobile homes taken at the direction of the president and general counsel of the Texas Manufactured Housing Association for inclusion in a booklet prepared by the Association.[99] In view of the obvious interest of the Association in portraying mobile homes in the most commercially advantageous light possible, the usefulness of these pictures is, at best, dubious.

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[95] *Id.* at 10.

[96] 301 U.S. 441 (1937).

[97] Id. at 451.

[98] Petition at 21.

[99] S.F., *supra* note 1, at 118-19. The record does not reveal the source of the pictures of the site-built houses.

Without providing any information as to cost or other consequences, petitioners next attack Ordinances 58 and 78 by contending that there were options available to the city council other than the option of requiring mobile homes to be located in mobile home parks.[100] Even assuming the viability of these options, choices between options are the exclusive province of the duly elected legislative body,[101] which here has opted for requiring mobile homes to be located in mobile home parks. Such a determination, even where "fairly debatable," must be upheld.[102]

Petitioners also attack Ordinances 58 and 78 because they are the only zoning or land-use ordinances for Brookside.[103] First, petitioners claim that the ordinances are arbitrary and unreasonable because, while prohibiting placement on their land of a mobile home, the absence of other zoning restrictions leaves open the possibility that petitioners could erect on their land a high rise apartment complex or other commercial venture. There is, however, a simple explanation why Brookside does not have a comprehensive zoning scheme. As discussed at 3 *supra*, Brookside is presently a "bedroom" community, and has no industry. As a result, there has been no need for it to zone for nonexistent property uses.

Second, petitioners claim that, under Tex. Rev. Civ. Stat. Ann. art. 1011c (Vernon 1963), Ordinances 58 and 78 are invalid because the Texas statute requires a comprehensive zon-

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[100]Petition at 18-19. Among the options proposed by petitioners was an ordinance "requiring all structures to be built with certain kinds or types of exterior siding materials, roofing, etc. . . ." *Id.* at 19. One wonders if, following on petitioners' suggestion, petitioners would object to a requirement that the exteriors of all residences, including mobile homes, be composed of brick.

[101]*See, e.g.*, Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 469-70 (1981); Ferguson v. Skrupa, 372 U.S. 726, 729 (1963); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 394-95 (1940); *Townsend*, 301 U.S. at 451.

[102]*Euclid*, 272 U.S. at 388.

[103]Petition at 11, 17.

ing scheme or no scheme at all. Petitioners, however, ignore the Texas Supreme Court's holding on this issue: "Because Brookside Village, a general law city, has no comprehensive zoning plan, the ordinances in question do not come under article 1011a, which embodies legislative authorization for zoning. *See* Tex. Rev. Civ. Stat. Ann. art. 1011c . . . . A city, however, may regulate land use under its general police power."[104] As this Court repeatedly has held, the interpretation of state law by the highest court of that state is controlling and binding upon this Court.[105] Petitioners' argument, therefore, must fail.

Petitioners next contend that Ordinances 58 and 78 deny them equal protection because their mobile home, unlike earlier mobile homes, was manufactured in accordance with the Manufactured Home Construction and Safety Standards (the "HUD regulations")[106] it is entitled to the same treatment as site-built houses.[107] This argument was resolved as early as *Euclid* wherein the Court observed:

> The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance, although some industries of an innocent character might fall within the proscribed class.[108]

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[104]633 S.W. 2d at 793 n.4.

[105]*E.g.*, City of Eastlake v. Forest City Enters., Inc., 426 U.S. 668, 674 n.9 (1976); Eisenstadt v. Baird, 405 U.S. 438, 442 (1972).

[106]24 C.F.R. § 3280.1-3280.904 (1982), *as amended at* 47 Fed Reg. 28, 092 (1982).

[107]Petition at 5-6, 25.

[108]272 U.S. at 388-89.

This quotation is particularly appropriate to this case in view of the fact that the majority of mobile homes in Brookside were not manufactured in accordance with the HUD regulations,[109] and, as discussed at 21 n. 90 *supra*, even those that were are not subject to the same construction standards as site-built houses. In any event, the Texas Supreme Court has set forth the proper course to be followed for any change in Brookside's policy toward mobile homes: "It is possible that the general improvement in appearance and quality of manufacture of mobile homes will persuade municipalities to alter ordinances similar to the one before us. Such changes, however, should be made through the legislative, not judicial, process."[110]

The Brookside city council has not excluded mobile homes from Brookside, but only has required them to be placed in mobile home parks. Based on a variety of decisions by this Court and the record below, there is no doubt that this requirement was based on concerns for the health, safety, morals and general welfare of Brookside's citizens.[111] As such, the ordinances

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[109]City of Brookside Village v. Comeau, 633 S.W. 2d at 795 n.6.

[110]*Id.* at 795.

As the Texas Supreme Court also noted, its decision upholding locational restrictions on mobile homes is the majority rule. *Id.* at 794. Most recently, for example, the Maine Supreme Judicial Court upheld an ordinance requiring mobile homes to be placed in mobile home parks. Stewart v. Inhabitants of Durham, No. 81-252 (Maine Oct. 14, 1982) (a copy of this decision is reprinted in Appendix C, at 60a.) Numerous decisions of other state courts have upheld similar restrictions. *E.g.*, Mathews v. Fayette County, 233 Ga. 220, 210 S.E.2d 758 (1974); City of Colby v. Hurtt, 212 Kan. 113, 509 P. 2d 1142 (1973); State v. Larson, 292 Minn. 350, 195 N.W. 2d 180 (1972); Town of Londonderry v. Faucher, 112 N.H. 454, 299 A.2d 581 (1972); Gravatt v. Borough of Latrobe, 44 Pa. Commw. Ct. 47, 404 A.2d 729 (1979); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978). *Contra* Robinson Township of Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981).

[111]That mobile homes continue to present safety problems not presented by site-built houses is evident from a November 4, 1982 article in the Austin American Stateman newspaper, a copy of which is

represent a proper exercise of the city council's police power. Petitioners have failed to meet their heavy burden of showing that the ordinances were unreasonable and arbitrary, and could not be related reasonably to the public health, safety, morals or general welfare.

III. Congress, Through the National Manufactured Housing Construction and Safety Standards Act of 1974, Has Not Attempted To Pre-Empt the Power of States and Cities To Legislate the Location of Mobile Homes.

As their last gasp, petitioners contend that section 5403 of the NMHCSSA has pre-empted Ordinances 58 and 78.[112] This argument is frivolous, as readily may be seen from even a cursory review of the NMHCSSA and its legislative history, as well as from consideration of the tenth amendment implications.

In *Chicago and North Western Transportation Co. v. Kalo Brick & Tile Co.*,[113] the Court reiterated that "[p]re-emption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion or that the

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reprinted in Appendix D, at 70a, reporting a storm in Port Isabel and South Padres Island, Texas, which uprooted and blew into canals a total of approximately twenty-six (26) mobile homes.

[112]Petition at i, 25-29. In their Questions Presented, petitioners allege that the NMHCSSA has pre-empted state regulation of mobile homes, but in their Reasons for Granting the Petition petitioners contend that both the NMHCSSA and the TMHSA have pre-empted Ordinances 58 and 78. Accordingly, petitioners' position is unclear. In any event, however, the Texas Supreme Court ruled that the entry of the state into an area of legislation did not pre-empt automatically a city from legislating in that area, and that Ordinances 58 and 78 are compatible with the TMHSA. City of Brookside Village v. Comeau, 633 S.W.2d at 796. As discussed at 25 *supra*, this interpretation of state law is controlling. Therefore, the only remaining issue is whether the NMHCSSA has pre-empted the ordinances.

[113]450 U.S. 311 (1981).

Congress has unmistakably so ordained.' "[114] Even where a federal statute or regulation pre-empts state law, it does so only to the extent the state law is in conflict with the federal statute or regulation.[115]

As set forth in the legislative history of the NMHCSSA, the purposes to be served by the Act were "to reduce injuries, deaths, insurance costs and property damage from mobile home accidents and to improve the quality and durability of mobile homes."[116] Accordingly, the HUD regulations were issued to set construction and installation standards in order to improve the quality of mobile homes relative to the quality of mobile homes manufactured prior to implementation of the HUD regulations. However, Ordinance 58 pertains only to mobile home parks and the requirements therefor, and Ordinance 78, the ordinance which is the specific subject of the instant suit, only pertains to the location of mobile homes. Therefore, Ordinance 58, as amended by Ordinance 78, in no way conflicts with the NMHCSSA or the HUD regulations, and petitioners point to no provision indicating otherwise.[117]

Petitioners, attempt to obfuscate the flaws in their argument by contending that "the alleged public purpose *goals* of this City have been pre-empted."[118] Even assuming this were a proper application of the pre-emption standard, the NMHCSSA was

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[114]*Id.* at 317 (quoting Florida Lime & Advocado Growers v. Paul, 373 U.S. 132, 142 (1963)).

[115]Maryland v. Louisiana, 451 U.S. 725, 747 (1981).

[116]S. Rep. No. 693, 93rd Cong., 2d Sess. 143, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4273, 4408. *See also* 42 U.S.C. §5401 (Supp. V 1981) (adopting almost word-for-word the legislative history's declaration of purpose).

[117]Even if parts of Ordinance 58 could be seen as conflicting with the NMHCSSA or the HUD regulations, that still would not provide a basis for invalidating the locational requirements of Ordinance 78, particularly since Ordinance 58, § XXIV(C) specifically provides for the severability of any provision held to be invalid.

[118]Petition at 28 (emphasis added).

not an attempt to make mobile homes the equivalent of site-built houses. Rather, Congress simply was seeking to upgrade the quality of mobile homes. The Brookside city council was motivated by concerns for the differences betwen mobile homes and site-built houses, and not the differences between pre-HUD regulation and post-HUD regulation mobile homes.

Equally important to the pre-emption issue are the implications of petitioners' argument on the tenth amendment to the Constitution. As discussed previously, the sole portion of the ordinances with which petitioners are concerned is the requirement that mobile homes be located in mobile home parks. In *National League of Cities v. Usery*,[119] the Court held that the federal government could not "operate to directly displace the States' freedom to structure integral operations of traditional governmental functions."[120] No one seriously may doubt that zoning or other land-use planning is an area of traditional state and local government function.[121] To suggest, therefore, that Congress may pre-empt a city's zoning or other land-use determinations is to suggest that Congress may displace a traditional state and local government function. There is no basis whatsoever for petitioners' suggestion that Congress, through the NMHCSSA, sought to wield its power in such a fashion.

The NMHCSSA has not pre-empted either the ordinance providing for the location of mobile homes or the ordinance setting forth the requirements for mobile home parks.

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[119]426 U.S. 833 (1976).

[120]*Id.* at 852.

[121]Warth v. Seldin, 422 U.S. 490, 508 n. 18 (1975); *see Penn Central*, 438 U.S. at 129; *Village of Belle Terre*, 416 U.S. at 8-9; *Euclid*, 272 U.S. at 386-90.

CONCLUSION

For the foregoing reasons, the writ should be denied.

Respectfully Submitted,

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APPENDIX A

Findings of Fact, Conclusions of Law, Judgment and Orders of the District Court in *Comeau v. City of Brookside Village*, No. 78-F2046 (Dist. Ct. Tex.).

1. Findings of Fact and Conclusions of Law.

No. 78-F2046

IN THE DISTRICT COURT OF
BRAZORIA COUNTY, TEXAS
300TH JUDICIAL DISTRICT

HOMER N. COMEAU and HAZEL A. COMEAU

VS.

CITY OF BROOKSIDE VILLAGE, ET AL.,

FILED
MAY 9, 1980

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above captioned cause came on for trial before the Court without a jury on February 11, 1980. All parties and their attorneys were present. After considering the pleadings, the evidence and the argument of counsel, the Court, in response to a request from Plaintiffs, HOMER N. COMEAU and HAZEL A. COMEAU, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. Ordinance 58 and Ordinance 78 of the City of Brookside Village were duly passed and in effect prior to Plaintiffs' purchase of their mobile home.

2. Plaintiffs' Fairway Doublewide mobile home is a mobile home as defined in the city ordinances of Brookside Village.

3. Plaintiffs' placement of their mobile home on their property within the limits of the City of Brookside Village was a violation of Ordinances 58 and 78 of the City of Brookside Village.

4. The City of Brookside Village has no public sewage system.

5. Water is supplied to Brookside Village by means of private water wells.

6. The lack of municipal water and sewage systems creates a potential health hazard for Brookside Village.

7. Ordinances 58 and 78 of the City of Brookside Village bear a substantial relationship to the public health, safety and welfare of the residents of Brookside Village.

CONCLUSIONS OF LAW

1. Ordinances 58 and 78 of the City of Brookside Village are valid city ordinances.

2. Ordinances 58 and 78 of the City of Brookside Village are constitutional.

3. Ordinance 58 and 78 of the City of Brookside Village do not represent an abuse of municipal discretion.

4. Ordinances 58 and 78 of the City of Brookside

Village represent a valid exercise of the police power of municipalities.

Signed this 9th day of May, 1980.

Tom Kenyon
Judge

2. Judgment.

No. 78-F-2046

IN THE DISTRICT COURT OF
BRAZORIA COUNTY, TEXAS
300TH JUDICIAL DISTRICT

HOMER N. COMEAU and HAZEL A. COMEAU

VS.

CITY OF BROOKSIDE VILLAGE, ET AL.,

FILED
MARCH 4, 1980

JUDGMENT

On the 11th day of February, 1980, came on to be heard the above entitled and numbered cause and HOMER N. COMEAU appeared in person for the Plaintiffs and by his attorney of record and announced ready for trial, and THE CITY OF BROOKSIDE VILLAGE, Defendant appeared through its Mayor Louis Boehm and by its attorney of record and announced ready for trial and no jury having been demanded, all matters of fact and things in controversy were submitted to the Court.

The Court, after hearing the evidence and arguments of counsel, is of the opinion that the City Ordinance No. 58 and City Ordinance No. 78 of Defendant, CITY OF BROOKSIDE VILLAGE, are constitutional, and further the Plaintiffs should remove their mobile home from its unauthorized location.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that City Ordinance No. 58 and City Or-

dinance No. 78 of Defendant, CITY OF BROOKSIDE VILLAGE, are constitutional;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs take nothing by this suit and that Defendants be in all things discharged; and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED by the Court that Plaintiffs remove their mobile home from its unauthorized location within 60 days from the date this Court's judgment becomes final.

All costs of court are taxed against the Plaintiffs for which let execution issue. All other relief not expressly granted herein is denied.

SIGNED this 4th day of March, 1980.

Tom Kenyon
Judge

APPROVED AS TO FORM
AND SUBSTANCE:

By: /s/ William E. Kuhlman
William E. Kuhlman
3616 Preston Road
Pasadena, Texas 77505
947-1670
State Bar No.: 11756500
ATTORNEY FOR DEFENDANT

APPROVED AS TO FORM ONLY:
/s/ John A. Wright, Jr.
John A. Wright, Jr.
777 South Post Oak Road
Suite 990
Houston, Texas 77056
871-9542
State Bar No.: 22043500
ATTORNEY FOR PLAINTIFFS

3. Order Granting Temporary Injunction.

No. 78-F2046

IN THE DISTRICT COURT OF
BRAZORIA COUNTY, TEXAS
300TH JUDICIAL DISTRICT

HOMER N. COMEAU and HAZEL A. COMEAU

VS.

CITY OF BROOKSIDE VILLAGE, ET AL.,

FILED
OCTOBER 30, 1978

ORDER GRANTING TEMPORARY INJUNCTION

On October 2, 1978, the Court heard and considered the application of HOMER N. COMEAU and HAZEL A. COMEAU, Plaintiffs, for a Temporary Injunction upon their verified petition, to which was attached a sworn affidavit in support of the Plaintiffs' allegations, and the Plaintiffs having appeared in person and by their attorney and the Defendant, after due notice, by and through their attorney of record, and the Court, having heard and considered the evidence and argument of counsel:

The Court finds and concludes that HOMER N. COMEAU and HAZEL A. COMEAU, Plaintiffs herein, will probably prevail on the trial of this cause; that the CITY OF BROOKSIDE VILLAGE, Defendant herein, has prior to the granting of this Temporary Injunction issued cita-

tions against Plaintiffs in regard to their possession, use or occupancy of their manufactured home on certain real property owned by Plaintiffs, located at 12700 Mykawa Road in the City of Brookside Village, and have also expressed their intention to have the manufactured home of Plaintiffs removed from within the boundaries of the City of Brookside Village.

That if Defendant carries out said intention, they will thereby alter the status quo and tend to make ineffectual a judgment in favor of Plaintiffs, in that Plaintiffs will be put to unnecessary expense, and further, Plaintiffs' property will be made ineffectual for its intended use as a homestead.

And that unless Defendant is deterred from carrying out said intention, Plaintiffs will be without adequate remedy at law in that irreparable injury and harm will occur to Plaintiffs, their family and their homestead, by the denial of their use of said property for its intended purposes.

IT IS, THEREFORE, ORDERED that the City of Brookside Village, its agents and employees, Defendants herein, be, and they hereby are, commanded forthwith to desist and refrain from the issuance of any citations or other legal notices which are intended to act as a punitive measure against Plaintiffs in regard to their posession, use or occupancy of their manufactured home on their real property located at 12700 Mykawa Road in the City of Brookside Village:

IT IS FURTHER ORDERED that said Defendants herein, be, and they are, commanded forthwith to desist and refrain from denying Plaintiffs the use and quiet possession of their manufactured home located on their real property at 12700 Mykawa Road in the City of Brookside Village.

The clerk shall forthwith, on the filing by Plaintiffs of the bond hereinafter required, and on approving the same according to law, issue a Temporary Injunction in comformity with the law and the terms of this order.

This order shall not be effective unless and until Plaintiffs execute and file with the clerk a bond, in comformity with the law, in the amount of One Thousand Dollars ($1,000.00).

Sign this 30th day of October, 1978.

/s/ G.P. Hardy
JUDGE PRESIDING

3. Temporary Restraining Order and Show Cause Order.

No. 78-F2046

IN THE DISTRICT COURT OF
BRAZORIA COUNTY, TEXAS
149TH JUDICIAL DISTRICT

HOMER N. COMEAU and HAZEL A. COMEAU
Plaintiffs

VS.

CITY OF BROOKSIDE VILLAGE, ET AL.,
Defendants

TEMPORARY RESTRAINING ORDER AND SHOW CAUSE ORDER

The hereinabove entitled and numbered cause, and the Plaintiffs' Application for a Temporary Restraining Order, without notice, was presented to and heard by the Court on the date set forth hereinbelow. The Plaintiffs appearing by and through their attorney, John A. Wright, Jr., and the Court, having considered the verified pleadings and the Affidavit of the Plaintiffs, finds that Plaintiffs are entitled to a Temporary Restraining Order, pending a hearing on the Application for a Temporary Injunction, for the reason that Plaintiffs show probable cause and irreparable harm and injury for which there is no adequate remedy at law; the Court further finds that a bond in the amount of ONE THOUSAND AND NO/100

($1,000.00) DOLLARS will fully and adequately protect the rights and interest of Defendants until said hearing. It is therefore,

ORDERED, on Plaintiffs executing and filing with the Clerk of this Court, a good and sufficient bond in the sum of ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS conditioned that Plaintiffs will pay to Defendants any and all damages sustained if it shall be determined that Defendants have been wrongfully restrained pending the hearing on Application for Temporary Injunction, that Defendant City of Brookside Village, and its agents and employees, are enjoined and restrained from denying Plaintiffs the use and quiet possession of their manufactured home located on their real property at 12700 Mykawa Road in the City of Bookside Village, and it is further

ORDERED, that the City of Brookside Village, and its agents and employees, cease the issuance of any citations or other legal notices which are intended to act as a punitive measure against Plaintiffs in regard to their posession, use or occupancy of their manufactured home on their real property located at 12700 Mykawa Road in the City of Brookside Village, and if [sic] is further

ORDERED, that Defendants be directed to appear before this Court in the 149th District Courtroom in the County of Brazoria, Texas, at 9:00 o'clock, a.m. on October, 22nd, 1978, then and there to show cause, if any there be, why a temporary injunction should not issue against them enjoining and restraining Defendants from denying Plaintiffs the use and quiet possession of their manufactured home located on their real property at 12700 Mykawa Road in the City of Brookside Village, and further enjoining and restraining from denying, and re-

quiring Defendants to issue to Plaintiffs all permits and certificates which may be required and necessary for Plaintiffs to obtain utility building services at 12700 Mykawa Road, City of Brookside Village, Texas, and to occupy said premises until the final hearing or other disposition of this cause.

SIGNED on September 21, 1978, at 1:30 o'clock a.m.

/s/ Paul Ferguson
JUDGE PRESIDING

Entered on_____, 1978.

APPENDIX B

Constitution, Statute and Ordinances.

1. U.S. Const. amend. X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

2. Section 5401 of the National Manufactured Housing Construction and Safety Standards Oct of 1974, 42 U.S.C. §§ 5401-5426 (1976 & Supp. V 1981).

§ 5401. Congressional declaration of purposes

The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.

3. **Brookside Village, Tex., Ordinance 78 (Apr. 18, 1974).**

ORDINANCE NO. 78

AN ORDINANCE AMENDING ORDINANCE NO. 58; REGULATING THE PARKING OF MOBILE HOMES; REGULATING THE CHANGE OR REPLACEMENT OF MOBILE HOMES; PROVIDING FOR EMERGENCY USE OF MOBILE HOMES; REQUIRING PERMITS FOR SUCH EMERGENCY USE; PROVIDING FOR A PENALTY FOR VIOLATION HEREOF; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED by the Board of Aldermen of Brookside Village, Texas;

Section I. Subsections B and C of Section XVIII of Ordinance No. 58 is hereby deleted in its entirety, and is hereby amended to include the following provisions as set out herein.

Section II. Parking of mobile homes, camper buses, motor homes and camper trailers, for use as a residence, outside of a mobile home park shall be prohibited.

Section III. Mobile homes heretofore installed in compliance with the Ordinances of Brookside Village may remain in place, and continue to be used or occupied. Exchange, replacement, alteration, relocation or additions to mobile homes within Brookside Village is hereby prohibited, unless such move, replacement, alteration, relocation or addition is to or in a licensed mobile home park.

Section IV. The Board of Aldermen of Brookside Village, by a majority vote of its five (5) members, may grant to individuals the temporary use of mobile home, motor homes, camper busses, or camper trailers in the event of an emergency. An emergency shall only be loss of a permanent dwelling due to fire, flood or any other natural disaster. In the event any such application for

emergency temporary use of said mobile homes, motor homes, camper busses or camper trailers is granted by the Board of Aldermen, no such temporary use shall begin until:

A. A permit fee, to be established by the Board of Aldermen, is paid by the applicant.

B. A determination of the period of time such emergency use may continue, but in no event shall such period exceed thirty (30) days. However, each applicant may have his emergency permit extended for additional thirty (30) days periods. No permit shall be extended, or renewed, more than five times. All such extensions shall require a majority vote of the five (5) member Board of Aldermen.

C. The Board of Aldermen shall only grant an emergency permit for the express purpose of occupying a mobile home, motor home, camper bus or camper trailer as a residence, only while repairing, remodeling or replacing a permanent residence.

D. Any such emergency permit granted shall require the applicant to locate his temporary mobile home, motor home, camper bus or camper trailer upon the same lot, or parcel of real estate, as the permanent residence that is being repaired, remodeled or replaced.

Section [V] VI. An existing mobile home that is destroyed by fire, explosion, flood, or other natural disaster, may be replaced, if such replacement is of the same size, length, width and weight as the one destroyed.

Section [VI] V. This Ordinance shall become effective from and after the date of its passage, and after all applicable laws of the State of Texas, if any, have been complied with.

Section [VII] VI. Any person violating this Ordinance is guilty of a misdemeanor, and upon conviction shall be fined not less than Ten Dollars ($10.00) and not more than One Hundred-Dollars ($100.00). Each day a violation of this Ordinance continues shall be a separate offense.

Passed and approved this 18th day of April, 1974.

George Carter
MAY[illegible]

ATTEST:
/s/ Aurora C. Rodriguez
CITY SECRETARY

4. Brookside Village, Tex., Ordinance 58 (Aug. 6, 1970).

ORDINANCE NO. 58

AN ORDINANCE OF BROOKSIDE VILLAGE, TEXAS, FOR THE PURPOSE OF REGULATING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF MOBILE HOME PARKS IN THE VILLAGE OF BROOKSIDE; REQUIRING A CONSTRUCTION PERMIT FOR THE CONTRUCTION, ALTERNATION OR EXTENSION OF MOBILE HOME PARKS AND PROVIDING FOR INSPECTIONS AND FEES; REQUIRING A LICENSE FOR THE OPERATION OF A MOBILE HOME PARK AND PROVIDING FOR INSPECTIONS AND FEES; REQUIRING THAT AN ANNUAL, A SEMI-ANNUAL OR A TEMPORARY PARKING PERMIT BE OBTAINED FOR ANY MOBILE HOME OR TRAVEL TRAILER OCCUPYING A STAND IN A MOBILE HOME PARK AND PROVIDING FOR INSPECTIONS AND FEES; PROVIDING FOR APPEALS; ESTABLISHING STANDARDS FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF MOBILE HOME PARKS; PROVIDING THAT OWNERS OR OPERATORS OF EXISTING MOBILE HOME PARKS SHALL BE PERMITTED A PERIOD OF TIME AS HEREIN PROVIDED TO OPERATE A MOBILE HOME PARK WITHOUT OBTAINING A LICENSE: REGULATING MOBILE HOMES AND TRAVEL TRAILERS OUTSIDE OF MOBILE HOME PARKS: CONTAINING A REPEALING CLAUSE AND A SEVERABILITY CLAUSE: CONTAINING A PENALTY PROVISION AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF BROOKSIDE VILLAGE, TEXAS:

MOBILE HOME PARKS

I. **DEFINITIONS** – The following terms, phrases and words as used in this Ordinance shall have the following respective definitions:

A. *Annual parking permit* means a permit required for any mobile home or travel trailer which is occupying a stand in a mobile home park and which permit is valid for the period from January 1 through December 31 of the year of issuance.

B. *Board* means the Board of Aldermen.

C. *Building Official* is the Village Inspector or duly authorized representative.

D. *Cash* means United States currency or coin or a cashier's check or certified check or a postal money order.

E. *City* means Brookside Village, Texas.

F. *Construction permit* means the permit required for the construction, alteration or extension of any mobile home park in the City.

G. *Construction permitee* means the person to whom a construction permit has been issued.

H. *Current parking permit* means the person to whom a construction permit has been issued.

I. *Expandable room* means an enclosed or a semi-enclosed room or roofed portion which expands outward from the basic mobile home by means of rollers, hinges or other devices or arrangements, but which is designed as a structural portion of the mobile home and which is carried on, or within, the mobile home while travelling. Also includes permanent additions to mobile homes.

J. *Health Officer* means the Village or County Sanitarian.

K. *Label* means a metal inspection label or plate which has been permanently affixed by the manufacturer or by an approved testing agency to a mobile home or travel trailer or to equipment used in connection therewith and which contains a serial number, if re-

quired, the specifications of the vehicle or the equipment to which it is attached and which refers to any standards that have been met in the construction of such vehicle or equipment.

L. *License* means a mobile home park operator's license.

M. *Licensee* means the person to whom a mobile home park operator's license has been issued.

N. *Mobile Home* means a portable vehicle constructed on a chassis and which has been designed so that it may be occupied and used without a permanent foundation. For the purpose of this Ordinance, a mobile home shall mean a single family dwelling unit suitable for year-round occupancy and which has provision for electrical and water connections and which provides for waste disposal in compliance with the Plumbing Code requirements for dwellings. Such vehicle shall be eligible for registration and licensing by the State of Texas for operation on the public streets and highways, and be fourteen (14) feet in length or longer.

O. *Mobile home lot* means a parcel or tract of land for the placement of a single mobile home and the exclusive use of its occupants and which is located in a mobile home subdivision approved by the Planning Commission of the Village. This is to be distinguished from a mobile home stand and site located within a mobile home park.

R. *Mobile home stand* means that part of a mobile home park which has been improved for the placement of the mobile home including all required appurtenant structures and having provision for available utility connections.

S. *Occupant* means the person or persons who occupy a mobile home or travel trailer in a mobile home park. *Owner* means the owner or lessee, whether one or more, of the premises on which a mobile home park is operated when such person is not a licensee.

T. *Overnight parking* means the use of a mobile home park for a period not to exceed seven (7) days by a travel trailer or mobile home, provided that if said use exceeds seven (7) days, a valid annual, semi-annual, or temporary parking permit is required and the beginning date shall be the initial date of occupancy of the mobile home park. No permit or fee shall be required by the Village for the temporary use of a mobile home park for a period of seven (7) days or less.

U. *Parking permit* shall mean an annual or semi-annual parking permit.

V. *Person* means a natural person, his heirs, executors, administrators or assigns, and shall also include a firm, partnership, or corporation, its successors or assigns, or the agent of any of the aforesaid.

W. *Semi-annual parking permit* means a permit required for any mobile home or travel trailer which has been placed upon a stand in a mobile home park and which is valid for the period from January 1 through June 30 or for the period from July 1 through December 31 of the year of issuance.

X. *Service building* means a structure housing toilet facilities, lavatories, bathing facilities, and such other facilities, as may be required or permitted under the provisions of this Ordinance and which is used in connection with the operation of a mobile home park.

Y. *Sewer connection* means the connection consisting of the pipes, fittings and appurtenances from the drain outlet of the mobile home or travel trailer to the inlet of the corresponding sewer riser pipe or the sewerage system serving the mobile home park.

Z. *Sewer riser* means that portion of the pipe of the sewer lateral which extends vertically to the ground elevation and terminates at each mobile home stand.

AA. *Temporary parking permit* means a permit which may be used in lieu of an annual or semi-annual parking permit and which is valid for thirty (30) days from the date of issuance.

BB. *Travel trailer* means a portable vehicle built on a chassis and designed as a temporary dwelling for travel, recreation and vacation use and which has been permanently identified by the manufacturer. When such a vehicle has been equipped by the manufacturer for use on public streets and highways, the body of such vehicle shall not exceed eight (8) feet in width, but may be of any length, provided its gross weight does not exceed 4,500 pounds, or a travel trailer may be of any height, provided its length does not exceed fourteen (14) feet, exclusive of the tongue. The term *travel trailer* shall also be deemed to include all other portable contrivances other than mobile homes used or intended to be used generally for living and sleeping quarters and which may be moved under its own power, towed, or transported by another vehicle.

CC. *Utilities* means the telephone, water, sewage, gas or electrical distribution system, which are

available for connection to mobile homes or travel trailers in mobile home parks.

DD. *Utility connection* means the connection of available utilities in a mobile home park to a mobile home or travel trailer placed on a mobile home stand in a mobile home park.

EE. *Vehicle* means a mobile home or a travel trailer unless the context in which the word is used indicates that another meaning is intended.

FF. *Water connection* means the connection of the pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe for the water distribution system of a mobile home or travel trailer.

II. CONSTRUCTION PERMIT REQUIRED FOR MOBILE HOME PARK

A. It shall be unlawful for any person to construct, alter or extend any mobile home park within the corporate limits of the Village of Brookside, unless he shall first have obtained a mobile home park construction permit therefor from the Village.

B. Application for such permit shall be made to the Planning Commission in triplicate and the following information and items shall be furnished:

1. Name and address of applicant.
2. Interest of the applicant in the mobile home park.
3. Location and legal description of the mobile home park.
4. Complete engineering plans and specifications in triplicate for the proposed park showing:

a. The area and dimensions of the trace of land.
b. A plat or map of the proposed mobile home park showing the number, location and size of all mobile home sites, stands, locations and widths of roadways and walkways, service buildings and other proposed structures.
c. The location of water and sewer lines and riser pipes.
d. Plans and specifications for the water supply, including fire plugs, and refuse and sewage disposal facilities.
e. Plans and specifications for all buildings to be constructed within the mobile home park.
f. The location and details of lighting and electrical systems.
g. Surface drainage plan.

C. A separate permit shall be required for the building, electrical, plumbing and driveway-sidewalk and other permits when required.

D. Any person who has been denied a mobile home park permit, may appeal such denial by following the same procedure provided for an appeal from a license denial, revocation or suspension by the Building Official.

III. MOBILE HOME PARK OPERATOR'S LICENSE REQUIRED

A. It shall be unlawful to establish, maintain or operate a mobile home park without first securing a mobile home park operator's license therefor.

B. As an exception to the requirement for a license,

and as limited hereinafter, the owner or operator of an existing mobile home park will be permitted to continue operation of such park for a period of six (6) months from the effective date of this Ordinance without obtaining a license therefor upon the following conditions:

1. He shall make application for a license, paying the required fee therefor within ninety (90) days from the effective date of this Ordinance.

2. Upon receipt of his application, an investigation and inspection will be made of the existing mobile home park.

3. The applicant will not be required to make any modifications or changes in his existing mobile home park if the variance from the requirements of this ordinance is not dangerous to life, health and safety of the public.

4. The Building Official shall furnish to the applicant, in writing, a list of any necessary changes or modifications in the existing mobile home park, and it shall be the duty of the applicant to commence making such changes in good faith.

C. For good cause, the Building Official may extend the period for completion of such necessary changes or modifictions for one additional period of six (6) months, but in no event will an existing mobile home park be permitted to continue operations, if, at the end of one (1) year from the effective date of this Ordinance, the owner thereof has not obtained a mobile home park license. The owner or operator of an existing mobile home park license. The owner or operator of an existing mobile home park shall be entitled to ap-

peal any required changes or modifications and any denial of an extension of time for such changes or modifications to the Planning Commission by following the procedure that is provided for appeals for license denials, revocations or suspension by the Building Official, but the Planning Commission shall have no authority to extend the period for completion beyond one (1) year from the effective date of this Ordinance.

D. It shall be unlawful for any mobile home park owner or operator to continue operating any mobile home park unless he shall have made application for a mobile home park operator's license as provided herein within ninety (90) days from the effective date hereof.

E. It shall be unlawful for any mobile home park occupant to continue occupying a mobile home or a travel trailer located in a mobile home park which has not been duly licensed by the Village or the owner or operator which has not, within ninety (90) days from the effective date of this Ordinance, made application for a mobile home park operator's license. A ten-day written notice of such failure of the owner or operator of an existing mobile home park shall be given to the occupants of such mobile home park and the failure, refusal or neglect of such occupant or occupants to remove their mobile home or travel trailer therefrom, or to cease occupying such mobile home or travel trailer within said ten-day period, shall constitute an offense.

F. Licenses shall be valid for a period of one (1) year beginning on July 1 of each year and shall be renewable annually during the month of June. A non-

refundable license application investigation fee of $25.00 shall accompany each application for license, provided such investigation fee will be allowed as a credit upon the license if it is granted. The license fee and annual license renewal fee shall be determined by the following fee schedule:

2 through 15 mobile home stands	$ 25.00
16 through 40 mobile home stands	$ 50.00
41 through 60 mobile home stands	$ 75.00
61 through 80 mobile home stands	$100.00
Each stand in excess of 80	$ 1.00 each

IV. PERMITS

A. It shall be unlawful for any person to occupy a mobile home or travel trailer in a mobile home park without first securing a parking permit therefor except that no permit will be required for the use of a mobile home park for a period of seven (7) days or less.

B. It shall be unlawful for any person to occupy a mobile home or travel trailer in a mobile home park unless such vehicle has first been connected to the approved utilities exclusive of telephones available in such park.

C. It shall be unlawful for the occupant of a mobile home or travel trailer to connect or permit such vehicle to be connected to the available utilities in a mobile home park or for such vehicle to remain so connected, without first securing a parking permit except that no permit will be required for the use of a mobile home park for a period of seven (7) days or less.

D. It shall be the responsibility of a mobile home park licensse, his agents or employees, to notify the Village of Brookside, in writing, when any mobile home or travel trailer is to be connected to the available utilities in the mobile home park operated by the licensee. Failure to perform such notification shall constitute a misdemeanor under the terms of this Ordinance.

E. An annual parking permit shall be valid for the period from January 1 through December 31 of the year of issuance. A semi-annual parking permit shall be valid for the period from January 1 through June 30, or July 1 through December 31 of the year of issuance. An annual or a semi-annual parking permit may be issued only by the Village and such permits may not be issued by licensees or mobile home dealers. Application for an annual parking permit or a semi-annual parking permit shall be made to the Building Official. A cash fee of $18.00 shall be paid for an annual permit and no proration shall be allowed for an elapsed period of time in the year of issunce. A cash fee of $10.00 shall be paid for a semi-annual parking permit. Applications may be made by mail to the Building Official.

F. A temporary parking permit may be used in lieu of an annual or semi-annual parking permit and it shall be valid for a period of thirty (30) days from the date of issuance. A temporary parking permit may be obtained from the Building Official, in the same manner as an annual or semi-annual parking permit upon payment of a $5.00 cash fee.

G. A parking permit may be assigned in connection with the sale, lease, or renting of a mobile home or travel trailer or a permit holder may transfer a parking permit from one vehicle to another. Application for such assignment or transfer shall be made to the Building Official who shall furnish the necessary forms. A service charge of $2.00 will be made for each transfer or assignment. This provision is not to be construed as requiring an assignment of a parking permit from the seller in whose name the parking permit has been issued to the purchaser, provided the seller has delivered to the purchaser his receipt for such parking permit.

H. If the Building Official is furnished satisfactory proof that a parking permit which has been issued has been lost, destroyed or defaced, he may issue a replacement permit for the unexpired term of such permit, upon payment of a service charge of $2.00. The Building Official may prescribe such forms and requirements as he may, from time to time, find necessary to insure that no replacement parking permit is improperly issued.

I. The Building Official is hereby authorized to prescribe the form of parking permits and to require that additional relevant information be furnished, either in the application for parking permits, upon the face or back of the parking permit, or upon the receipt therefor. The Building Official is further hereby authorized to designate the place on or within a mobile home or travel trailer, that a parking permit shall be affixed or replaced and the failure, refusal or neglect of a parking permit holder to comply with this requirement, shall con-

stitute an offense and the Building Official is hereby authorized to disconnect or cause to be disconnected the available utilities in a mobil home park from such vehicle.

V. INSPECTION OF MOBILE HOME PARK

A. The inspecting authority shall make such inspection as necessary to insure compliance with the provisions of this Ordinance, semiannually, on the first day of January and the first day of July each year, or as soon thereafter as possible.

B. By the acceptance of the license, the licensee shall be deemed to authorize the inspection of a mobile home park at all reasonable hours. Such hours shall usually be during normal working hours and failure to permit such inspection shall be a ground for suspension and/or revocation of the license. Where there is reason to believe a violation may exist before or after the hours of normal inspection, the Building Official may authorize special inspections at any time; provided, however, nothing herein shall prohibit inspection for valid parking permits at any time.

C. Failure or refusal of a mobile home park occupant to permit inspection by the inspecting authority, or to permit the licensee to make necessary repairs or alterations in compliance with the requirements of the inspecting authority shall constitute a ground for disconnection of the utilities serving such mobile home. The mobile home occupant shall have the right to appeal any decision, order or action of the Building Official or the inspecting

authority by following the same procedure provided for appeals from license denials, suspensions or revocations by the Building Official.

VI. WRITTEN NOTICES OF VIOLATIONS TO BE CUMULATIVE OF PENAL PROVISIONS

A. The inspecting authority may issue written notice of violations to the licensee or his agent, or to any owner or operator for a mobile home park operating without a license during the first year from the effective date of this Ordinance, or to any mobile home park occupant, setting out the particular violation and setting out a time for making the necessary correction or repair.

B. The person receiving such a notice shall have the right of appeal from license denials, suspensions or revocations by the Building Official.

C. The provision for written notices shall be cumulative of the penal provisions hereinafter provided and the issuance of a written notice shall not prevent the filing of a criminal charge for violation of the provisions of this Ordinance.

VII. APPEALS FROM DECISIONS OF BUILDING OFFICIAL, ETC.

A. Any person whose application for a license has been denied by the Building Official, shall have the right to appeal such decision to the Board of Aldermen, by mailing postpaid or delivering to the Village Secretary, City Hall, Brookside Village, Texas, written notice of appeal within ten (10) days after he has been notified of such denial.

B. The Building Official shall have authority to suspend or revoke licenses or to order utility disconnections for the following violations of the provisions of this Ordinance:

1. A license may be suspended for any period of time up to six (6) months for a violation affecting the health, safety or welfare of occupants of a mobile home or of other persons or property.

2. A license may be revoked for a violation which is dangerous to life.

3. For a violation of the provisions of this Ordinance not deemed to require a license suspension or revocation, the utility connection servicing any stand or stands, or any structure in a mobile home park, may be disconnected or caused to be disconnected, provided a utility disconnection may be ordered in connection with a license suspension or revocation as to all or any part of a mobile home park if necessary to protect life or property.

C. After the period of suspension, a suspended license will be reinstated by the Building Official upon a showing or ability and willingness by the licensee to comply with the provisions of this Ordinance

D. A person whose license has been revoked, may apply for a new license six (6) months after such revocation by making a new application and paying the required fee therefor. Before granting such new license, the Building Official shall require the applicant to show ability and willingness to comply with the provisions of this Ordinance.

E. No sale, transfer or assignment of a revoked license or of a license during the period of suspension will be recognized by the Village, provided a person whose license has been suspended or revoked, may sell, transfer or assign his interest in the premises, if any, to another person who may then make application for a license to operate the mobile home park. If it is shown by the applicant that he has had no responsible connection with the mobile home park, he will be eligible for the granting of a new license and if a new license is granted, the new licensee may commence to operate the mobile home park upon issuance of the license.

F. Where a person whose license has been suspended or revoked, has no interest in the premises other than by agreement with the owner or owners of the premises, such person may advise the Village in writing of his withdrawal from any further connection with the mobile home park. In this event, and if it be shown that the owner or owners had no responsible connection with the actual operation and maintenance of the mobile home park, a new application may be made by any person other than the person whose license was suspended or revoked and if the new license is granted, the new licensee may commence to operate the mobile home park upon issuance of the license.

G. **Appeals:**

1. Any license revocation or suspension, or any order for a utility disconnection, or any decision, order or action taken by the Building Official may be appealed by any person affectd by

the decision, order or action to the Board by filing written notice of appeal within ten (10) days from the date of notice of such action, by mailing postpaid or delivering such notice to the Village Secretary, Brookside Village, Texas.

2. Upon written appeal as described in VII. G. 1, has been made within ten (10) days, a license suspension or revocation, or any decision or action by the Building Official, will be held in abeyance and such person will be given a hearing before the Board, provided any utility disconnection shall not be reconnected unless authorized by the Board after hearing.

VIII. MOBILE HOME REVIEW BOARD

A. The Board of Aldermen is hereby designated to be the Mobile Homes Review Board.

B. The Fire Marshal, Electrical Inspector and the Chief Building Inspector are designated as exofficio members.

C. Appeals to the Board shall be set for hearing within fifteen (15) days from the date notice of appeal was received by the Chairman, whenever possible. Such hearings may be continued from time to time until completed, but a final decision shall be made within thirty (30) days from the date notice of appeal was received by the Chairman, unless by consent or request of the person appealing, a hearing is set for or continued beyond such thirty (30) day period.

D. The Board shall have authority to affirm, modify or reverse the decision of or action of the Building

Official. The Building Official, a licensee, or any person who appeals a decision or action of the Building Official, may appeal a decision or action of the Board to the Village Council by mailing postpaid or delivering to the Village Secretary written notice of appeal address to the Mayor and the Village Council, City Hall, Brookside Village, Texas, within ten (10) days after he has been notified of the decision of the Board.

E. A license suspension, revocation, utility disconnection order, or other decision or action of the Building Official, which has been upheld by the Board, shall be immediately effective, subject however, to the right of the person affected thereby, to appeal to the Village Council as provided above. The decision of the Village Council on any appeals from the Board to the Village Council, shall be final.

IX. ENVIRONMENTAL, OPEN SPACE AND ACCESS REQUIREMENTS

A. *General Requirements:* Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable adverse influences and no portion subject to unpredictable and/or sudden flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.

B. *Soil and Ground Cover Requirements:* Exposed ground surfaces in all parts of every mobile home park shall be paved, or covered with stone screen-

ings, or other solid material, or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.

C. *Site Drainage Requirements:* The ground surface in all parts of every mobile home park shall be graded and equipped to drain all surface water in a safe, efficient manner.

D. *Park Areas for Non-resident uses*

1. Mobile homes shall be separated from each other and from other buildings and structures by at least ten (10) feet on the sides and end-to-end clearance of ten (10) feet.

2. Nothing contained in this section shall be deemed to prohibit the sale of a mobile home located on a mobile home stand and connected to the utilities.

E. *Required Separation between mobile homes in mobile home parks*

1 Mobile homes shall be separated from each other and from other buildings and structures by at least ten (10) feet on the sides and end-to-end clearance of ten (10) feet.

2. An accessory structure which has a horizontal area exceeding twenty-five (25) square feet, is attached to a mobile home or located within ten (10) feet of its window, and has an opaque top or roof that is higher than the nearest window, shall, for purposes of all separation requirements, be considered to be part of the mobile home.

F. *Required recreation areas.*

1. In all parks accommodating or designed to accommodate twenty-five (25) or more mobile homes, there shall be not less than one (1) recreation area which shall be easily accessible to all park residents.

2. The size of such recreation areas shall be based upon a minimum of 200 square feet for each mobile home stand. No outdoor recreation area shall contain less than 2,500 square feet.

3. All mobile home parks shall provide screening such as fences or natural growth along the property boundary line separating the park and adjacent land.

4. The minimum lot size shall be forty (40) feet by seventy-five (75) feet.

G. *Required Lot size, setbacks, ruffer strips and screening in mobile home parks.*

1. All mobile homes shall be located at least twenty-five (25) feet from any boundary line abutting upon a public street or highway and at least five (5) feet from interior property boundary lines.

2. There shall be a minimum distance of ten (10) feet between individual mobile homes and four (4) feet from adjoining pavement of a park street, or common parking area, or other common areas.

3. All mobile home parks shall provide screening such as fences or natural growth along the property boundary line separating the park and adjacent land.

4. The minimum lot size shall be forty (40) feet by seventy-five (75) feet.

H. *Park street system.*

1. **General Requirements:** All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to the internal parking area or mobile home stand. Alignment and gradient shall be properly adapted to topography.

2. **Access:** Access to mobile home parks shall be designed to minimize congestion and hazards at the entrance or exit and allow free movement of traffic on adjacent streets. The entrance road connecting the park streets with the public streets or roads shall have a minimum road pavement width of 34 feet, where parking is permitted on both sides, or a minimum road pavement width of twenty-seven (27) feet where parking is limited to one side. Where the primary entrance road is more than 100 feet long and does not provide access to abutting mobile home lots within such distance, the minimum road pavement width may be 24 feet, provided parking is prohibited at both sides.

3. **Internal Streets:** Surfaced roadways shall be of adequate width to accommodate anticipated traffic, and in any case shall meet the following minimum requirements:

a. All streets, except minor streets, shall be not less than 24 feet in width.

b. Minor streets, when parking is prohibited,

shall not be less than 20 feet in width. Such a street will be acceptable only if it is less than 500 feet long and serves fewer than 25 mobile homes, provided, such street may exceedd 500 feet if it is a one-way street and provides access to abutting mobile home sites on one side only.

c. Dead-end streets shall not exceed 1,000 feet in length. Such street shall be provided with a turn-around at the closed end and having an outside roadway diameter of at least 75 feet.

4. **Required Illumination of Park Street Systems:** All mobile homes shall be furnished with lighting units so spaced and equipped with luminaries placed at such mounting heights as will provide the following average maintained levels of illumination for the safe movement of pedestrians and vehicles at night:

a. All parts of the park street system shall average 0.6 foot-candles and no part shall have less than 0.1 foot-candles.

b. Potentially hazardous locations, such as major street intersections and steps or stepped ramps shall be individually illuminated and shall have a minimum of 0.3 foot-candles.

5. **Street Construction and Design Standards**

a. **Pavement:** All streets shall be paved and well drained under normal use and weather conditions. Pavement edges shall be protected to prevent raveling of the wearing surface and shifting of the pavement base. Street sur-

faces shall be maintained free of dust, cracks, holes and other hazards.

b. **Grades:** Grades of all streets shall be sufficient to insure adequate surface drainage, but shall be not more than eight (8%) percent. Short runs with a maximum grade of twelve (12%) percent may be permitted, provided traffic safety is assured by appropriate paving, adequate leveling areas and avoidance of lateral curves.

c. **Intersections:** Within 100 feet of an intersection, streets shall be approximately right angles. A distance of at least 150 feet shall be maintained between center lines of offset intersecting streets. Intersections of more than two(2) streets at one (1) Point shall be avoided.

d. **Minimum standards for paving streets** is six-inch (6") cement, limestone or stabilized shell sealed and topped with one-and-one-half inch asphalt.

I. *Required Off-Street Parking Areas*

1. Off-street parking areas shall be provided in all mobile home parks for the use of park occupants and guests. Such areas shall be furnished at the rate of not less than two (2) spaces for each mobile home stand, each space to be accessible without moving another car.

2. Required car parking spaces shall be so located as to provide convenient access to the mobile home, but shall not exceed a distance of forty

(40) feet from the mobile home that it is intended to serve.

J. *Walks*

1. *General Requirements:* All parks shall be provided with safe, convenient all-season pedestrian access walks of adequate width for the intended use, constructed of durable material (asphalt, concrete, or other masonary construction approved by the Building Official), and convenient to maintain, and such walk shall be placed between individual mobile homes, the park streets and all community facilities provided for park residents. Sudden changes in alignment and gradient shall be avoided. Shell walk are unacceptable.

2. *Common Walk System:* A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks shall have a minimum of three (3) feet, and meet the requirements of J. 1. above.

3. *Individual Walks:* All mobile home stands shall be connected by individual walks to a common walk, or paved street, or to a paved driveway or parking space which is connected to a paved street. Such individual walks shall have a minimum width of two (2) feet and otherwise meet to requirements of J. I. above.

K. *Mobile Home Stands*

1. The area of the mobile home stand shall be improved to provide en adequate foundation for

the placement and tie-down of the mobile home, thereby securing the superstructure against uplift, sliding, rotation and overturning.

2. The mobile home stand shall not heave, shift or settle unevenly under the weight of the mobile home due to inadequate drainage, vibration or other forces acting on the superstructure.

3. Mobile home stands shall be constructed of reinforced concrete and plan shall be subject to approval of the Village Engineer.

X. WATER SUPPLY

A. *General Requirements*

1. An accessible, adequate, safe, and potable supply of water shall be provided in each mobile home park. Where a public supply of water of satisfactory quantity, quality, and pressure is available, connection shall be made thereto and its supply used exclusively.

2. When a satisfactory public water supply is not available, a private water supply system may be developed and used as approved by the Village.

B. *Source of Supply*

1. The water supply shall be capable of supplying a minimum of 150 gallons per day per mobile home.

2. Every well or suction line of the water supply system shall be located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from

any source. The following minimum distances between wells and various sources of contamination shall be required:

Contamination Source	Well or Suction Line
Building Sewer	50 feet
Septic Tank	50 feet
Disposal Field	100 feet

3. No well casings, pumping machinery or suction pipes shall be placed in any pit, room or space extending below ground level nor in any room or space above ground which is walled in or otherwise enclosed, unless such rooms, whether above or below ground, have free drainage by gravity to the surface of the ground.

4. The treatment of a private water supply shall be in accordance with applicable laws and regulations.

C. *Water Storage Facilities*

1. All water storage reservoirs shall be covered, watertight and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. Manholes shall be constructed with overlapping covers, so as to prevent the entrance of contaminated material.

2. Reservoir overflow pipes shall discharge through an acceptable air gap.

D. *Water Distribution System*

1. The water supply system of a mobile home park

shall be connected by pipes or other approved material to all mobile homes, buildings, and other facilities requiring water.

2. All water piping, fixtures and other equipment shall be constructed and maintained in accordance with the requirements of the Building Code and shall be of a type and in a location approved by the inspecting authority.

3. The water piping system shall not be connected with nonpotable or questionable water supplies and shall be protected against the hazards of backflow, back siphonage or cross connection.

4. The system shall be so designed and maintained as to provide a pressure of not less than twenty (20) pounds per square inch, under normal operating conditions at service buildings and other locations requiring potable water supply.

5. The system shall be a looped system in order to better maintain water pressure.

E. *Individual Water-Riser Pipes and Connections*

1. The individual water riser pipes shall be located within the confined area of the mobile home stand at a point where the water connection will approximate a vertical position.

Water riser pipes shall extend at least four (4) inches above ground elevation. The pipe shall be not less than three-quarter inch in diameter. The water outlet shall be capped when a mobile home does not occupy the stand.

3. Adequate provision shall be made to prevent freezing service lines. Valves and riser pipes shall be protected from heaving and/or thawing actions of the ground. Surface drainage shall be diverted from the location of the riser pipe.

4. A shut-off valve shall be provided near the water riser on each mobile home stand.

5. Underground stop waste valves shall not be installed on any water service.

F. *Fire Plugs* - Fire plugs shall be placed on at least six (6) inch lines and all mobile home stands must be within 400 feet of the nearest plug, if a public water supply system is available. This requirement shall not apply if a private water system services said park, or if a public water supply source is not available.

XI. SEWAGE DISPOSAL

A. *General* - An adequate and safe sewerage system, shall be provided in mobile home parks. Such system shall be designed, constructed and maintained in accordance with Village ordinances and the Village of Brookside Building Code. All sewer lines shall be connected to the Village of Brookside sewer lines, if such sewer lines are availablle.

B. *Sewer Lines* - All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movements and shall be separated from the park water supply system at a safe distance as provided by State law and ordinance of the Village. Sewers shall be at a grade which will insure adequate flow as provided in the

Building Code. All sewer lines shall be constructed of approved materials, shall be adequately vented, and shall have watertight joints.

C. *Individual Sewer Connections*

1. Each mobile home stand shall be provided with at least one four-inch diameter sewer riser pipe. The sewer riser pipe shall be so located on each stand that the sewer connection to the mobile home drain outlet will approximate a vertical position. Each mobile home stand shall be provided with a four-inch P-trap for the mobile home sewer connection and be properly vented.

2. The sewer connection shall have an inside diameter not less than three (3) inches, and the slope of any portion thereof shall be at least one-fourth inch per foot. The sewer connection shall consist of one (1) pipe line only without any branch fittings. All joints shall be watertight.

3. All materials used for sewer connections shall be semi-rigid, corrosive resistant, non-absorbent and durable. The inner surface shall be smooth.

4. Provision shall be made for capping the sewer riser pipe when a mobile home does not occupy the lot. Surface drainage shall be diverted away from the riser. The rim of the riser pipe shall extend at least four (4) inches above ground elevation.

5. Sewer lines laid on Village easements of right-of-way shall conform to all Village codes and ordinances.

D. *Sewerage Treatment and/or Discharge*

1. Where the sewer lines of a mobile home park are not connected to a public sewer, all proposed sewage disposal facilities shall be approved by the inspecting authority prior to construction.

2. Effluents from sewage treatment facilities shall not be discharged into any waters of the State except in compliance with the applicable law.

XII. ELECTRICAL DISTRIBUTION SYSTEM

A. *General Requirements* - Each park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with the Building Code and the National Electrical Code governing such systems.

B. *Individual Electrical Connections*

1. Each mobile home stand shall be provided with an approved disconnecting device and overcurrent protective equipment. The minimum service per outlet shall be 120/240 volts AC, 50 amperes. A minimum of 50 amperes per mobile home stand shall be used for calculating the main service.

2. Outlet receptacles at each mobile home stand shall be located not more than 25 feet from the overcurrent protective devices in the mobile home and a three-pole four-wire grounding type

shall be used. Receptacles shall be of weather-proof construction and configurations shall be in accordance with American Standard Outlet Receptacle C-73.

3. The mobile home shall be connected to the outlet receptacle by an approved type of flexible cable with connectors and a male attachment plug.

4. Where the connected load of the mobile home is more than fifty (50) amperes either a second outlet receptacle shall be installed or electrical service shall be provided by means of permanently installed conductors. Except that a single providing more than fifty (50) amperes may be used subject to the express approval of the electrical inspector who will ascertain the safety and capability of the receptacle.

5. All exposed noncurrent carrying metal parts of mobile homes and all other equipment shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method of grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for mobile homes or other equipment.

C. *Structural Requirements for Buildings*

1. A permanent type management office shall be constructed at each licensed mobile home park. Construction standards for this office shall comply with the Village of Brookside Building Code. All other permanent type structures, except building housing sanitary facilities, shall be at the option of the licensee.

2. All portions of a structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites, and other destructive elements. Exterior exposed portions of such materials shall be constructed and protected as to prevent entrance or penetration of moisture and weather.

3. All rooms containing sanitary or laundry facilities shall have:

   a. Sound resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture resistant material.

   b. At least one (1) window or skylight facing directly to the outdoors. The minimum aggregate gross area of windows for each required room shall be not less than ten percent (10%) of the floor area served by them.

   c. At least one (1) window which can be easily opened, or a mechanical device which will adequately ventilate the room.

4. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. The rooms shall be screened to prevent direct view of the interior when the exterior doors are open.

XIII. SERVICE BUILDING AND OTHER COMMUNITY SERVICE FACILITIES

A. The requirements of this section shall apply to service buildings recreation buildings and other community service facilities when constructed.

1. Management ofices, repair shops and storage areas.
2. Sanitary facilities.
3. Laundry facilities
4. Indoor recreation areas.
5. Commercial uses supply goods or services for the exclusive use of park occupants.

B. Mobile home parks shall have not less than one (1) flush toilet and one (1) lavatory for men and one (1) flush toilet and one (1) lavatory for women. The building or buildings containing such community sanitary facilities shall be accessible to all mobile homes.

1. Illumination levels shall be maintained as follows:
   a. General seeing tasks - five (5) footcandles.
   b. Laundry room work area - forty (40) footcandles.
   c. Toilet room, in front of mirrors - forty (40) footcandles.

2. Hot and cold water shall be furnished to every lavatory, sink, bathtub, shower and laundry fixture, and cold water shall be furnished to every water closet and urinal.

C. Barbacue Pits, Fireplaces, Stoves and Incinerators

1. Cooking shelters, barbacue pits, fireplaces, wood-burning stoves and incinerators shall be

so located, constructed, maintained and used as to minimize fire hazards and smoke nuisance both on the property on which used and on neighboring property.

2. No open fire shall be permitted except in facilities provided. No open fire shall be left unattended. No fuel shall be used and no material burned which emits dense smoke or objectionable odors.

XIV. REFUSE HANDLING

The storage, collection and disposal of refuse in the mobile home parks shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards or air pollution (see Village Ordinances for specific requirements).

XV. FUEL SUPPLY AND STORAGE

A. *Natural Gas System*

1. Natural gas piping systems shall be installed and maintained in accordance with the Building Code and other regulations governing such systems.

2. Each mobile home stand provided with piped gas shall have an approved manual shut-off valve installed upstream of the gas outlet. The outlet shall be equipped with an approved cap to prevent accidental discharge of gas when the outlet is not in use.

B. *Liquefied Petroleum Gas Systems*

1. Liquefied petroleum gas systems shall be in-

stalled and maintained in accordance with applicable laws, ordinances and regulations governing such systems.

2. Bulk storage and distribution system plans shall be submitted to the Fire Marshal for approval.

C. *Fuel Oil Supply Systems*

1. All fuel oil supply systems shall be installed and maintained in accordance with applicable laws, ordinances and regulations governing such systems.

2. Storage tanks located in areas subject to traffic shall be protected against physical damage.

XVI. FIRE PROTECTION

A. Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

B. Portable fire extinguishers of a type approved by the Fire Marshal shall be kept in service buildings and all other locations designated by the Fire Marshal or fire inspectors and such extinguisher shall be maintained in good operating condition.

C. Fires shall be made only in stoves, incinerators and other equipment intended for such purposes.

D. Fire hydrants shall be located within 400 feet of any mobile home service building or other structure in the park, on line not less than six (6) inches. Fire hydrant locations shall be determined by the Fire Marshal.

XVII. MISCELLANEOUS PARK REQUIREMENTS

A. *Responsibilities of the Mobile Home Park Licensee*

1. The person to whom a license for a mobile home park has been issued shall be responible for operation of such park in compliance with the provisions of this chapter and he shall provide adequate supervision to maintain such park, its facilities and equipment in good repair and in a clean and sanitary condition.

2. The licensee shall be responsible for notifying park occupants of the applicable provisions of this Ordinance.

3. The licensee shall be responsible for supervising the placement of mobile homes on mobile home stands within the mobile home park. The licensee shall be responsible for maintaining a register containing the names of all park occupants. Such register shall be available to any authorized person inspecting the park for the enforcement of this Ordinance, or any other ordinances of the Village of Brookside.

B. *Responsibilities of Park Occupants*

1. Mobile home park occupants shall comply with all applicable provisions of this Ordinance and such occupant shall maintain his mobile home, mobile home stand, mobile home site and appurtenances and equipment in good repair and in a clean and sanitary condition.

2. The mobile home park occupant shall be responsible for the proper placement of his

mobile home on the mobile home stand and for proper installation of all utility connections.

C. A mobile home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home stand and connected to water, sewerage, and electrical utilities, and other services where required for health and safety of the occupants.

XVIII. PARKING OF MOBILE HOMES OUTSIDE OF LICENSED MOBILE HOME PARK

A. No mobile home shall be parked in violation of any enforceable deed restriction or covenant.

B. A mobile home may be parked on a vacant lot, or plot, outside a mobile home subdivision as defined in "DEFINITIONS" (and no other), provided the lot, or plot has 9,000 square feet of land. The mobile home shall set back a minimum of 25 feet from any public street right-of-way line and seven and one-half (7-1/2) feet from any side or back lot line, or in accordance with subdivision deed restrictions.

C. Not more than one (1) mobile home shall be parked on a vacant lot or plot without first obtaining a mobile home park license. Such lot or plot shall contain a minimum of 9,000 square feet. Any mobile home placed on such a lot, or plot, shall meet the minimum standards for plumbing, heating, and electrical systems outlined or referred to in this Ordinance.

D. A mobile home may be parked adjacent to a residence, or place of business, provided a spacing of ten (10) feet from the nearest building, on the

same property, is maintained and seven and one-half (7-1/2) feet from any interior property lines, or not less than twenty-five (25) feet set-back from a street. Not more than one (1) mobile home shall be parked on the same lot, or plot, with a residence, or commercial building, without first obtaining a mobile home park license. No mobile home shall be parked adjacent to a residence or place of business, where such placement would create a hazard to life, safety or health.

E. All occupied mobile homes located outside a mobile home park or mobile home sales park for more than 48 hours, shall be connected to all required utilities, and permits obtained from the Building Official for a foundation, driveway, plumbing and electricity.

F. Mobile homes located outside mobile home parks will be connected by separate and individual water and sewer taps to city services where such services are available.

G. Parking permit fees for single mobile homes located outside mobile home parks shall be the same as fees for mobile homes inside the mobile home parks, except that a license fee will not be required.

H. The Building Official may permit the temporary parking of a mobile home in a location outside an approved and licensed mobile home park for a period in excess of 48 hours, provided such location shall not create a health, traffic, or other hazard, and provided such mobile home shall not be occupied.

I. All mobile homes, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices, or safeguards, which are required by this Ordinance and other regulations, pamphlets, or data made a part hereof when installed, repaired, or altered, shall be maintained in good working order. The owner or occupant, shall be responsible for the maintenance of the mobile home.

XIX. It shall be unlawful to occupy a mobile home as any type occupancy other than as a private dwelling, provided, however, a mobile home may be parked at a constructing site for use as a field office for a period not exceeding the period of construction and not more than one (1) mobile home may be used for demonstration and office at a mobile home sales park.

XX. MEANS OF EGRESS

A. Every mobile home shall be provided with at least two (2) exit doors. Such doors shall be located remote from each other. Screen doors shall be on the hinged type, opening outwardly from the inside. Escape doors suitably designed as an emergency exit-way, and releasing to the outside, may be provided as a substitute for one (1) exit door when length of the mobile will not permit use of a regular exist door.

B. Locking Mechanism, when provided on doors and screen doors, shall be of a type which permits opening from the inside by the

simple operation of a knob, or lever, or by pressure against the door or screen door.

XXI. Each mobile home must have minimum space of 200 square feet floor area, and qualify under Section I. O. herein (DEFINITIONS).

XXII. No travel trailer shall be used as nor occupied as a permanent type residence except in a mobile home park. Travel trailers so occupied shall comply with American Standard Association Pamphlet A 110.2-1963 Plumbing, Heating and Electrical Systems in Travel Trailers.

XXIII. **LIGHT AND VENTILATION**

A. No mobile home shall be used or occupied without proper light and ventilation. All habitable rooms (including rooms with combined functions) shall be provided with natural light openings by means of fixed, or openable windows, glazed doors, or openable roof, or fixed roof panels. The light opening size required in each such room shall not be less than ten percent (10%) of the floor area of the room, combined rooms, or space. **Exception:** In lieu of natural light, artificial light may be provided in kitchens, laundry rooms, and other rooms approved by the Building Official.

B. Bathrooms, toilet compartments, and kitchens may use mechanical ventilation systems in lieu of natural ventilation. The system shall have a capacity to provide a minimum of twelve (12) air changes per hour in the area occupied by such rooms. The mechanical ventilation system shall discharge to the outside air. All rooms used for

sleeping purposes shall be provided natural ventilation by means of openings in the interior walls, or roof. The natural ventilator shall have no less than four percent (4%) of the floor area of the room, combined room or space, or three (3) square feet, whichever is greater

XXIV. VIOLATIONS AND PENALTIES

A. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted, and upon conviction of any such violation such person shall be punished by a fine of not more than one (1) hundred dollars (100.00)

B. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

C. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected hereby, it being the intent of the Village Council in adopting this Ordinance that no portion thereof or provisions or regulation contained herein shall become inoperative or fail by reason of an unconstitutionality and all provisions of this Ordinance are declared to be reasonable.

D. The provisions of this Ordinance requiring parking permits for mobile homes in mobile home parks shall become effective on the date last shown below.

E. The Council of Brookside Village hereby finds and determines that for the purpose of protecting the health, safety and welfare of the people of the Village of Brookside Village, and particularly the people who reside in and occupy mobile home travel trailers in mobile home parks, and for the purpose of providing the inspection necessary to accomplish this, this Ordinance and the regulations, standards, and sanctions herein established, and the construction permits, mobile home park licenses, parking permits, and the fees provided therefor, are necessary to accomplish such purposes.

XXV. This Ordinance shall take effect from and after ten (10) days from its passage by the Village Council. The Village Council. The Village Secretary is hereby directed to give notice hereof, by causing the caption of this Ordinance to be published in the official newspaper of the Village of Brookside, at least twice within ten (10) days after the passage of this Ordinance.

PASSED AND APPROVED THIS 6 day of August, 1970.

/s/ Mrs. Shirley M. Zamorsky

Mayor - Brookside Village

ATTEST:

/s/ N. Zainfeld, Jr.

Village Secretary

APPENDIX C

Opinion in *Stewart v. Inhabitants of Durham*, No. 81-252 (Maine Oct. 14, 1982).

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. 3066
Law Docket No. Law-81-252

KENNETH STEWART *et al.*

v.

INHABITANTS OF TOWN OF DURHAM *et a.*

Argued September 7, 1982
Decided October 14, 1982

Before McKUSICK, C.J., and GODFREY, NICHOLS, ROBERTS, CARTER, VIOLETTE, and WATHEN, JJ.

McKUSICK, C.J.

Defendant Town of Durham[1] appeals from an order of the Superior Court (Androscoggin County) enjoining the Town from enforcing its mobile home ordinance against the Stewarts. The Superior Court held that the ordinance, which excludes from the Town all mobile homes except those located in duly licensed mobile home parks, is unconstitutional in its entirety because of its broad "grandfather clause." In so doing, the Superior Court accepted the interpretation of that grandfather clause adopted by Durham officials. We conclude that the proper legal construction of the grandfather clause saves it and the rest of the ordinance from constitutional attack, and we therefore reverse the Superior Court's order.

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[1]The building inspector and the members of the Durham Zoning Board of Appeals also were named as defendants and now join in the Town's appeal.

In 1972, the Town of Durham adopted a comprehensive plan as a guide to the community's future development. At its annual town meeting, held on March 6, 1976, the Town adopted a mobile home ordinance. Section 6(c) of that ordinance states, "No person shall maintain and occupy a mobile home in the Town of Durham except in a duly licensed mobile home park." Section 4 of the ordinance, its grandfather clause, provides:

> The provisions of this ordinance shall not apply to occupied mobile homes lawfully existing within the Town of Durham . . . nor shall it apply to the replacement of lawfully existing mobile home.

Appellees Kenneth and Nancy Stewart own a piece of land in Durham. Their lot is not within a mobile home park. In August, 1980, they applied for a building permit to move their mobile home onto their Durham land from its location in a Brunswick mobile home park. Their application was denied by Durham's building inspector and then by the Town's zoning board of appeals. The Stewarts thereupon sought relief in the Superior Court. The evidence produced there shows that ever since its enactment, the ordinance's grandfather clause has been applied broadly by the Durham selectmen and building inspector. Specifically, those town officials have interpreted the clause to allow the owner of a mobile home lawfully in Durham before the ordinance took effect 1) to keep his home where it was, 2) to replace it with a new mobile home on the same lot, 3) to sell it, together with the lot, to a new owner, or 4) to move it to another lot in Durham, not previously the site of a mobile home (providing that the new location otherwise met the requirements for residential use).

Before the Superior Court the Stewarts argued, among other things, that Durham's mobile home ordinance is inconsistent with the Town's comprehensive plan[2] and violative of the equal protection and due process clauses of the United States and Maine Constitutions.[3] The court rejected their first argument, but held that the broadly construed grandfather clause rendered the ordinance unconstitutional, and enjoined the Town from enforcing the ordinance so as to prevent the Stewarts from moving their mobile home onto their lot in Durham. The Town has appealed the Superior Court's decision on the constitutional issue, and the Stewards have cross-appealed on the comprehensive plan question. We sustain the Town's appeal and deny the Stewart's cross-appeal.

I. CONSTRUING THE ORDINANCE

In holding that the Durham mobile home ordinance is unconstitutional because of the breadth of its grandfather clause, the Superior Court implicitly accepted the interpretation given to that clause by Durham's selectmen and building inspector. In so doing, the court made an error of law. *See LaPointe v. City of Saco*, Me., 419 A.2d 1013, 1015 (1980) (meaning of terms in a zoning ordinance is a question of law for the court). It is true that contemporaneous construction of a law by its drafters or administrators is not to be lightly disregarded by a court. *See Kelley v. Halperin*, Me., 390 A.2d 1078, 1080 (1978). However, against that traditional rule of construction we must weigh two countervailing considerations: the fact

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[2]30 M.R.S.A. § 4962(1)(A) (1978) requires that a town's zoning ordinances be "pursuant to and consistent with a comprehensive plan adopted by its legislative body."

[3]U.S. Const. amend. XIV; Me. Const. art. I, § 6-A.

that the plain language of the grandfather clause and the context in which it must be read support a narrower construction of its terms more readily than the expanded interpretation accepted by the Superior Court, and our conclusion that a narrow construction will enable us to avoid the constitutional difficulties identified below. An administrative construction of an ordinance or statute is never conclusive upon a court. *See State v. York Utitlities Co.*, 142 Me. 40, 44, 45 A.2d 634, 635-36 (1946). We decline to adopt the administrative construction put upon the grandfather clause in Durham's mobile home ordinance.

The grandfather clause exempts "occupied mobile homes lawfully existing within the Town of Durham" and the "replacement" of such homes from the requirement that mobile homes be confined to licensed mobile home parks. An "occupied mobile home" is a home actually being lived in – a home "settled" on a given piece of land, with the usual water, sewer, and electrical hookups. An "occupied mobile," in fact, is best thought of as being integrated with the lot on which it is located. Words used in a statute are to be given their plain and natural meaning whenever possible. *See Town of Arundel v. Swain*, Me., 374 A.2d 317, 320 (1977). The terms used in the Durham grandfather clause, given their plain and natural meaning, call for an interpretation significantly narrower than that accepted by the Superior Court. The wording of the clause suggests that the owner of a mobile home occupied lawfully in Durham before the ordinance took effect should be allowed to keep it, to replace it with a new mobile home on the same lot, or to transfer it, together with its lot, to a new owner (as it is the home itself, not the owner, that is "grandfathered"), but *not* to move it to another lot within Durham's borders.

Looking beyond the wording of the grandfather clause itself, we note that a narrow construction of the clause is consistent with the overall purpose of the mobile home ordinance, while the broad reading tends to undermine that purpose. Applied as the Durham officials have applied it, the clause virtually guarantees that the number of mobile homes in Durham outside mobile home parks will never drop below the number of nonconforming uses in 1976, when the ordinance was enacted. Moreover, if all of the grandfathered mobile homes could without restriction be moved about within the geographical limits of Durham, there is a potential for further erosion of property values and of the Town's aesthetic character. Those possible consequences run counter to the acknowledged goals of the ordinance as a whole,[4] to preserve the aesthetic character of Durham and to protect property values. Each section of an ordinance should be read so as to harmonize with the entire legislative scheme of which it is a part. *See Seven Islands Land Co. v. Maine Land Use Regulation Commission,* Me., ____ A.2d ____, ____ (September 17, 1982, slip op. at 6-7). Construing the grandfather clause to permit the maintenance, replacement, or sale of existing mobile homes only at their original locations in Durham best conforms to the objective of the ordinance as a whole to restrict mobile homes to mobile home parks after March 6, 1976.

We adopt this construction of the grandfather clause not only because it is the most plausible reading of the clause but also because it avoids the serious constitutional questions presented by the town officials' interpretation. "Courts must construe legislative enactments so as to avoid a danger of unconstitutionality . . . The cardinal

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[4]See the discussion in part II of this opinion.

principle of statutory construction is to save, not to destroy." *State v. Davenport*, Me., 326 A.2d 1, 5-6 (1974). *See also* 82 Am.Jur.2d, *Zoning & Planning* § 68, at 500 (1976) ("where a zoning ordinance is susceptible of two different reasonable constructions, one of which will render the ordinance valid and the other render it invalid, the court will adopt the one which renders it valid."). This principle of statutory construction is fully consistent with the general rule that the courts are to give effect to legislative intent, *see State v. Hussey*, Me., 381 A.2d 665, 666 (1978), as it cannot be assumed that the drafters of the Durham mobile home ordinance intended their product to violate the constitution. In *Clardy v. Town of Livermore*, Me., 403 A.2d 779 (1979), we interpreted a Livermore ordinance differently from the way it had been interpreted by town officials in order to avoid the decision of a constitutional question altogether. Here, we adopt a different construction in order to avoid a close constitutional question, although we cannot entirely escape a discussion of the due process and equal protection issues raised by the Stewards.

II. The Constitutional Questions

Properly construed, the grandfather clause to Durham's mobile home ordinance easily passes constitutional muster. Under the due process clauses of the federal and state constitutions, a town ordinance must "bear a reasonable relationship to the public health, safety, morals, or general welfare," and "must not be unreasonable, arbitrary, or discriminatory based upon the reasonably foreseeable future development of the community." *Warren v. Municipal Officers of Gorham*, Me., 431 A.2d 624, 627 (1981). Furthermore, according to *Warren*, aesthetic consideration, fear of deterioration in the

value of neighboring properties, and concern over an adverse impact on the town's tax base are legitimate reasons "which do properly relate to the public health, safety, morals or general welfare." 431 A.2d at 628. Those are the same three reasons that the Superior Court found were in fact Durham's proposed justifications for its mobile home ordinance.[5]

In light of the listed purposes, the grandfather clause in the Durham ordinance is not unreasonable, arbitrary, or discriminatory. Rather, it strikes a rational balance between speedy achievement of the Town's legitimate planning goals and the interest of those town residents who moved mobile homes into Durham before the ordinance was enacted. The grandfather clause,which is properly read only to allow such residents to remain in their existing mobile homes at their 1976 locations, replace them, or transfer them, preserves the bulk of the rights anticipated by such residents when they purchased their mobile homes, while ensuring that over time, by attrition, the nonconforming uses will be reduced in number. Some form of a grandfather clause is probably required to save the entire ordinance from a constitutional challenge under

[5]Witnesses in the Superior Court testified that town officials, in drafting the mobile home ordinance, were concerned about the "aesthetic contrast" between the Town's traditional older homes and the metallic, box-shaped, flat-roofed mobile homes. There was also expert testimony that the presence of mobile homes tended to depress the value of the traditional homes on nearby or adjoining lots. Finally, there was evidence that the Town's planning board took into consideration the fact that an occupied mobile home requires approximately the same level of municipal services as a site-built home while generating less tax revenue due to its lower market value.

the takings clause.[6] Thus, such a clause is not merely rationally related to the Town's goals, but is probably necessary to effect those goals, as a mobile home ordinance vulnerable to a challenge under the takings clause is of no use whatever in implementing the Town's ultimate planning scheme.

Under the equal protection clauses of the federal and state constitutions, once a legislative classification has been found not to "[trammel] fundamental personal rights" or be "drawn upon inherently suspect distinctions such as race, religion, or alienage," *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976), it need only be shown to be rationally related to a legitimate public purpose.

> A classification . . . must be natural and reasonable and based upon an actual difference in the classes bearing some substantial relationship to the public purpose sought to be accomplished by the discrimination in rights and burdens. If a classification, though necessarily discriminatory, stands these tests, it is not a denial or equal protection of the laws.

Wright v. Michaud, 160 Me. 164, 171, 200 A.2d 543, 547 (1964).

No fundamental right or inherently suspect distinction is implicated by Durham's decision to grant a limited exemption from the terms of its mobile home ordinance for prior nonconforming uses. The remaining "rational relationship" test is easily met by the Durham ordinance,

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[6] U.S. Const. amend. V (applicable to the states through amend. XIV); Me. Const. art. I, § 21. A provision "for the continuance of the nonconforming use . . . is ordinarily included in zoning and police power ordinances because of hardship and [the] doubtful constitutionality of compelling immediate cessation of nonconforming uses." *Town of Windham v. Sprague*, Me., 219 A.2d 548, 550 (1966).

grandfather clause and all, for the same reasons discussed in the due process context above. The exemption for prior nonconforming uses is rationally related to the Town's aesthetic, property-value, and tax-base goals, as it saves the entire ordinance from a serious takings clause question while allowing the Town to proceed consistently towards its objective of confining mobile homes to duly licensed mobile home parks.

III. The Comprehensive Plan

The Superior Court held that Durham's mobile home ordinance, taken in its entirety, is consistent with the Town's 1972 comprehensive plan. Whether or not the requirements of 30 M.R.S.A. § 4962 apply to the ordinance in question here,[7] we have no doubt that the Superior Court's conclusion was warranted by the evidence before it. The comprehensive plan itself indicates that Durham's planning board and residents were concerned with preserving the Town's rural character and protecting the tax base — concerns overlapping considerably with those underlying the mobile home ordinance. Most significantly, the

[7]We assume without deciding that Durham's mobile home legislation is truly a "zoning" ordinance as defined by 30 M.R.S.A. § 4962(1)(H) (1978) ("the division of a municipality into districts and the prescription and reasonable application of different regulations in each district"). *But cf. Benjamin v. Houle*, Me., 431 A.2d 48 (1981) (Auburn ordinance prohibiting the removal of gravel from any land in the city characterized as "a general and uniform citywide regulation" and not a zoning ordinance at all); *Town of Boothbay v. Nat'l Advertising Co.*, Me., 347 A.2d 419 (1975) (Boothbay ordinance regulating all off-premises billboards in the town by same standard treated as an exercise of the town's police powers). It is here argued that Durham's mobile home ordinance is a zoning ordinance rather than a uniform town-wide regulation because it implicity creates a new division or zone — mobile home parks — in addition to the two zones ("rural" and "resource protection") already created by Durham's land use ordinance.

comprehensive plan specifically states, "the Planning Board approves of locating mobile homes in parks designed to be harmonoius with the general character of the Town." We would be hard pressed to conceive of any stronger evidence that the mobile home ordinance in this case is consistent with Durham's comprehensive plan.

IV. Conclusion

At oral argument, counsel for appellants Kenneth and Nancy Stewart expressly waived all claims that anything in the Durham mobile home ordinance other than its grandfather clause renders it unconstitutional. Accordingly, our decision on the two issues presented to us concludes this case in favor of the Town. The entry shall be:

Appeal sustained.

Cross-appeal denied.

Remanded to the Superior Court for entry of judgment for defendants and further proceedings consistent with the opinion herein.

APPENDIX D

Article in Austin American Statesman, Nov. 4, 1982

17 INJURED AS BIG WINDS BATTER COAST

PORT ISABEL (AP) – Residents and vacationers sorted through wreckage left by a violent storm that surprised this Texas coastal community early Wednesday, injuring at least 17 people and leaving some homeless.

"I thought the building was just going to go crashing," said Sheila Kilgore of St. Louis, who was on her first business trip to Texas when the storm hit. She said eerie sounds jolted her awake in her hotel room in nearby South Padre Island.

Winds were clocked at 84mph at Port Isabel and 81 mph on Padre Island. Five people were hospitalized and at least 12 others were inured as the winds tossed more than 12 mobile homes into a canal, uprooting palm and mesquite trees and causing some flooding.

Kilgore said she selected an island hotel while in the area on business because "everybody told me Padre Island was a nice place to stay."

After the storm, however, she moved to a hotel in Harlingen about 40 miles inland from the island.

Kilgore said she was awakened in the middle of the night by what sounded like a woman's scream.

The sound turned out to be the wind wailing through her balcony door. The hotel began to shake and the lights went out, she said.

"I thought the building was just going to come crashing down," she said. "Now that I look back on it, it seems kind of funny."

Three women and one man were admitted to Valley Community Hospital in Brownsville. The woman, who had a shoulder injury, was listed in stable condition while the men, with back injuries, were reported in guarded condition.

One man was admitted to Valley Baptist Medical Center with broken ribs. He was in fair condition.

Twelve people were treated and discharged from the two hospitals.

The sudden storm blew roofs off homes and damaged condominiums, said South Padre Island Mayor Minnie Solomonson. Recreational vehicles were destroyed or overturned and power lines brought down. Some debris-filled streets in Port Isabel were impassable and about 14 mobile homes in one park were thrown into a canal. Airplanes at area airports were also were damaged.

"We were totally unprepared because no one had issued a warning," Solomonson said. "It was just a freak."

"We have some homeless people," she said, but declined to estimate how many.

U.S. Coast Guard Chief Bill Barts, commander of the Port Isabel station, said the storm, which rolled in about 1 a.m. Wednesday, surprised the Coast Guard with its intensity.

"That's when the bottom fell out," he said.

Barts said the National Weather Service message the Coast Guard received Tuesday called for southeasterly winds at 17 to 23 mph shifting to northerly at 23 to 34 mph as the front approached.

Those winds, he said, are not unusual for a typical norther.

"That's a piece of cake down here," he said. "But we didn't know it was going to be as bad as it was."

A Coast Guard helicopter was flying over the area to assess damage and look for injured people, Barts said. A Cameron County sheriff's officer said authorities found no signs of campers reported missing after the storm and now think the campers left the area safely.